

***THE MARCH 12, 2019 COUNCIL PACKET MAY BE VIEWED
BY GOING TO THE TOWN OF FRISCO WEBSITE.***

**RECORD OF PROCEEDINGS
WORK SESSION MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
MARCH 12, 2019
4:00PM**

Agenda Item #1: Summit Community Climate Action Plan: Strategies for a Sustainable Future 4:00pm

Agenda Item #2: 4th of July Discussion 5:00pm

**RECORD OF PROCEEDINGS
REGULAR MEETING AGENDA OF THE
TOWN COUNCIL OF THE TOWN OF FRISCO
MARCH 12, 2019
7:00PM**

**STARTING TIMES INDICATED FOR AGENDA ITEMS ARE ESTIMATES ONLY AND
MAY CHANGE**

Call to Order:

Gary Wilkinson, Mayor

Roll Call:

Gary Wilkinson, Jessica Burley, Daniel Fallon, Rick Ihnken, Hunter Mortensen, Deborah Shaner, and Melissa Sherburne

Public Comments:

Citizens making comments during Public Comments or Public Hearings should state their names and addresses for the record, be topic-specific, and limit comments to no longer than three minutes.

NO COUNCIL ACTION IS TAKEN ON PUBLIC COMMENTS. COUNCIL WILL TAKE ALL COMMENTS UNDER ADVISEMENT AND IF A COUNCIL RESPONSE IS APPROPRIATE THE INDIVIDUAL MAKING THE COMMENT WILL RECEIVE A FORMAL RESPONSE FROM THE TOWN AT A LATER DATE.

Mayor and Council Comments:

Staff Updates:

Proclamation:

Girl Scout Week Proclamation

Consent Agenda:

- Minutes February 26, 2019 Meeting
- Home Rule Charter Review - Chapter 127, Offenses
- Island Grill Concessionaire Contract and Lease Agreement for Food and Beverage Services at the Frisco Bay Marina
- Resolution 19-09, a Resolution Adopting the Town of Frisco Minimum Street Design and Access Criteria, Dated March 12, 2019
- Resolution 19-11, a Resolution Approving an Agreement with Meeco Sullivan for the Purchase of a New Dock System at the Frisco Bay Marina without a Competitive Bidding Process
- Resolution 19-12, a Resolution for the Award of Contract for the Construction and Completion of the Second and Belford Connector Pathway Project (TAP No. M500-004/SA No.22395), Dated March 12, 2019

Adjourn:



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL

FROM: JOYCE ALLGAIER, COMMUNITY DEVELOPMENT DIRECTOR

RE: PRESENTATION OF THE SUMMIT COMMUNITY CLIMATE ACTION PLAN BY JESS HOOVER OF HIGH COUNTRY CONSERVATION CENTER (HC3)

DATE: MARCH 12, 2019

Summary: This work session serves as an opportunity for the Town Council to hear a presentation on the Summit Community Climate Action Plan (the Plan). Jess Hoover, Climate Action Director with HC3, will present an overview of the Plan including a specific focus on plan's carbon reduction goals and implementation strategies. The work session is intended to provide a time for greater understanding of this topic, discussion, and questions. No specific action is being asked of the Town Council.

Background: As part of the 2018 budget, Town Council approved of a \$25,000 allocation to support the drafting of a regional climate action plan. Headed up by HC3, the planning process was to include a baseline greenhouse gas study and identify short and long term goals with specific strategies to achieve those goals. In addition to allowing Frisco to help fulfil its own sustainability goals, the climate action plan project was intended to help the town meet its Compact for Colorado Communities commitments.

Now completed, the Plan is the product of the Summit Climate Action Collaborative, a group of communities, businesses, and organizations who funded and provided input on the plan. A steering committee, along with several expert groups provided direction, gave technical advice, and developed goals and action strategies. The consulting firm of Lotus Engineering and Sustainability facilitated the year-long planning process and drafted the initial report, in partnership with HC3. It is expected that the Summit Climate Action Collaborative will stay intact to implement the Plan on a regional basis over time.

In the 2019 budget, Town Council allocated \$25,000 toward the implementation of the Plan through the assistance of HC3.

Recommendation: Staff recommends the Town Council use this work session as an opportunity to gain an understanding of the content and recommended strategies of the Summit Community Climate Action Plan and for discussion and questions. It is intended that the climate action plan would come back to the Town Council at a future meeting for further discussion and adoption should the Town Council desire to do so.

Financial Impact: At this time, financial impacts are not itemized regarding the climate action plan implementation. It is clear that some of the strategies will have costs associated with them. It is anticipated that implementation would occur over time via the town's budget process, as approved by the Town Council each year. For example, the installation of solar panels on a Town of Frisco facility would necessitate that the yearly budget address such improvement. Staff will prepare additional financial analysis for a future meeting on this subject.

Reviews and Approvals: This report has been reviewed by:

Nancy Kerry, Town Manager
Bonnie Moinet, Finance Director



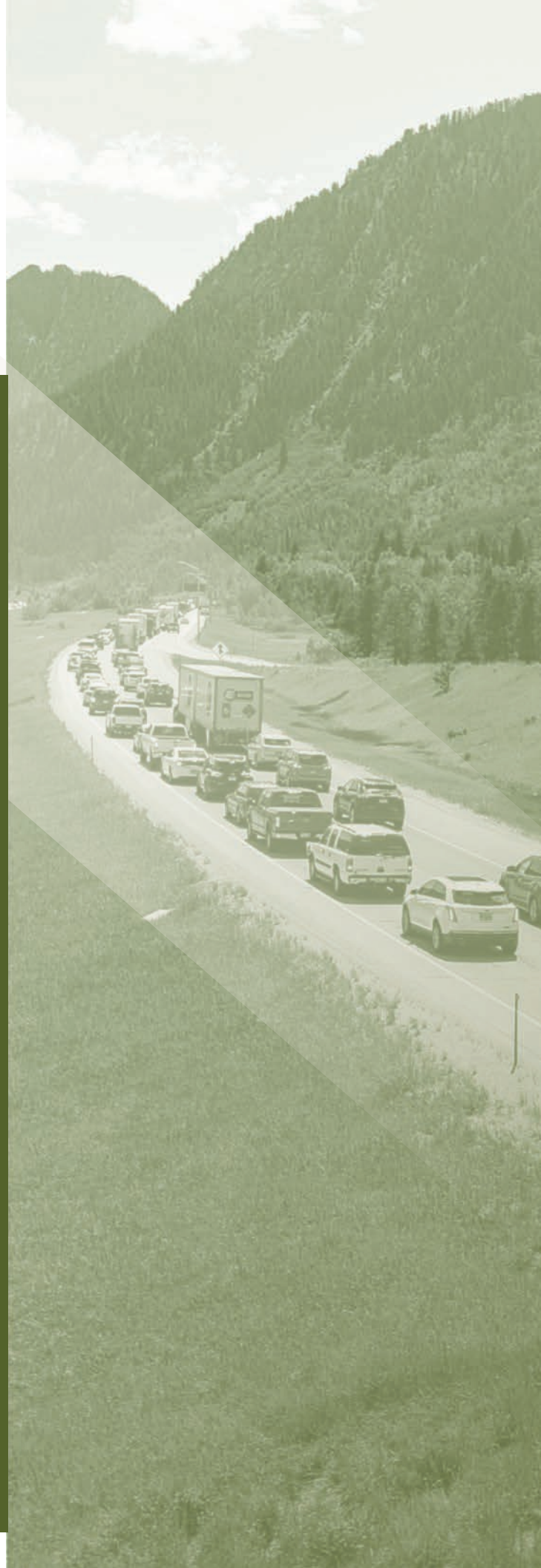
SUMMIT COMMUNITY CLIMATE ACTION PLAN: STRATEGIES FOR A SUSTAINABLE FUTURE

PREPARED BY: SUMMIT CLIMATE ACTION COLLABORATIVE

VISION STATEMENTS

WE BELIEVE THAT OUR COMMUNITIES WILL...

- be powered in ways that protect our vibrant mountain resources.
- maximize energy efficiency and lead in green design.
- design multi-modal transportation systems that discourage fossil fuel consumption.
- conserve natural resources through striving for zero waste.
- value healthy forests and understand their beneficial climate and environmental impacts.
- inspire residents and visitors to reduce emissions through outreach and leadership.



ACKNOWLEDGMENTS

The development of the Summit Community Climate Action Plan would not have been possible without the support and input of the Summit Climate Action Collaborative as well as expert group participants. Many of the organizations represented in the Collaborative also helped fund the project.



SUMMIT CLIMATE ACTION COLLABORATIVE MEMBERS

Arapahoe Basin

Mike Nathan

Breckenridge Grand Vacations

Emily Kimmel

Climate and Land Use Alliance

Donna Lee

Colorado Mountain College

Brooke Carson
Dave Askeland

Copper Mountain Resort

Jeff Grasser

High Country Conservation Center

Jen Schenk

Mountain Parks Electric

Chris Michalowski
Rob Taylor
Tom Sifers

Summit County Government

Dan Gibbs
Karn Stiegelmeier
Kate Berg
Michael Wurzel

Summit School District

Tracey Carish
Woody Bates

Town of Breckenridge

Erin Gigliello
Jeffrey Bergeron
Jessie Burley
Mark Truckey

Town of Blue River

Michelle Eddy

Town of Dillon

Jen Barchers
Ned West

Town of Frisco

Hunter Mortensen
Joyce Allgaier

Town of Silverthorne

Kelly Baldwin
Lina Lesmes

Vail Resorts

Brad Stewart
Ray Weller

Xcel Energy

Kelly Flenniken
Sharon Panas

*indicates Steering Committee Member

EXPERT GROUP PARTICIPANTS

BUILDING ENERGY

- Bruce Butler, Copper Mountain Resort
- Cody Jensen, High Country Conservation Center
- Eli Johnston, Town of Breckenridge
- Eric Westerhoff, Innovative Energy
- John McCormick, Town of Blue River
- Kasey Provorse, Energy Smart Colorado
- Matt Wright, Deeper Green Consulting
- Rick Weinman, Town of Frisco
- Stephen Oppito, Pinnacle Mountain Homes
- Tori Aidala, Norris Design

FORESTS

- Brad Piehl, JW Associates
- Brian Lorch, Summit County Government
- Cary Green, United States Forest Service
- Doozie Martin, Friends of Dillon Ranger District
- Howard Hallman, Forest Health Task Force
- Jason Lederer, Summit County Government
- Kim Schlaepfer, Walking Mountains Science Center
- Michael Wurzel, Summit County Government
- Scott Reid, Town of Breckenridge

MOBILITY AND TRANSPORTATION

- Curtis Garner, Summit Stage
- Jen Pullen, Town of Breckenridge
- Mark Johnston, Town of Breckenridge
- Michael Wurzel, Summit County Government
- Susan Lee, Town of Frisco
- Tom Gosiorowski, Summit County Government

PUBLIC ENGAGEMENT

- Adrienne Saia Isaac, National Ski Areas Association
- Austyn Dineen, Breckenridge Tourism Office
- Barry Rubenstein, High Country Conservation Center
- Brodie Boilard, Town of Frisco
- Haley Littleton, Town of Breckenridge
- Julie McCluskie, Summit School District
- Julie Sutor, Summit County Government
- Kerstin Anderson, Town of Dillon
- Kim Jardim, Town of Silverthorne
- Mikki Grebetz, Summit School District
- Russ Carlton, Vail Resorts
- Sarah Lopez, Summit County Government
- Stephanie Sweeney, Copper Mountain Resort
- Tara Galvin, The Summit Foundation
- Vanessa Agee, Town of Frisco

WASTE & RECYCLING

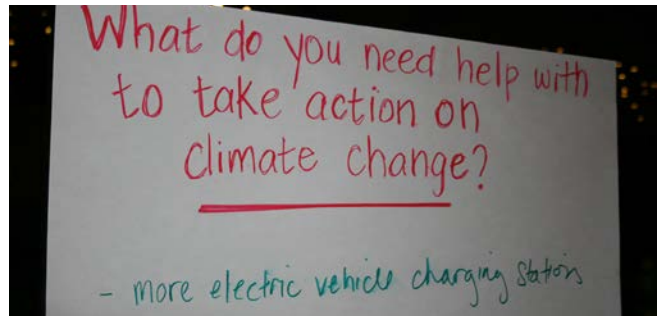
- Aaron Byrne, Summit County Government
- Rachel Zerowin, High Country Conservation Center
- Tom Gosiorowski, Summit County Government

WATER & SANITATION

- Jason Kruckeberg, Silverthorne/Dillon Joint Sewer Authority
- Jeff Goble, Town of Frisco
- Rob Martin, Copper Mountain Metro District
- Robert Buras, Town of Dillon

COMMUNITY PARTICIPANTS

On November 14th, 2018, over 60 community members attended an open house to add their thoughts, concerns and comments to the initial goals and strategies developed by the expert and Collaborative groups. This community feedback is included throughout the Climate Action Plan.



Barry Rubenstein

CONSULTANTS

Lotus Engineering and Sustainability facilitated the planning process and compiled this report, in partnership with High Country Conservation Center.

- Hillary Dobos, Principal and Co-Owner, Lotus Engineering and Sustainability
- Emily Artale, Principal Engineer and Co-Owner, Lotus Engineering and Sustainability
- Julia Ferguson, Senior Associate, Lotus Engineering and Sustainability

PROJECT MANAGER

- Jess Hoover, High Country Conservation Center



EXECUTIVE SUMMARY

SUMMIT COUNTY, LIKE ALL COMMUNITIES ACROSS THE WORLD, WILL BE IMPACTED SIGNIFICANTLY BY THE EFFECTS OF CLIMATE CHANGE.

Our way of life relies on the very environment in which we are located—the beautiful Rocky Mountains – and we recognize our responsibility to take a leading role in mitigating climate change. Average temperatures in Colorado have increased 2 degrees Fahrenheit over the past 30 years, with an additional 2 to 5 degrees’ warming expected by 2050.¹ These changes will affect the quality and length of ski seasons, and a change in visitation patterns would drastically affect our local economy and lifestyle.

Realizing our collective responsibility to mitigate greenhouse gas emissions and do our part to prevent climate change, High Country Conservation Center (HC3) convened the Summit Climate Action Collaborative in 2018. The Collaborative hired Lotus Engineering and Sustainability, LLC (Lotus) to support the development of the Summit Community Climate Action Plan and complete an initial community-wide greenhouse gas inventory for 2017. As with many communities,

emissions in Summit County are largely generated through energy use in buildings (65 percent) and transportation (33 percent). Lotus also worked with the Collaborative to help us understand strategies for reducing emissions, which were then modeled for greenhouse gas emission reduction potential.

The Collaborative group acknowledges that we do not yet have perfect solutions to reach the plan’s goals. However, we strongly believe in the ability of our community to work together to implement the strategies identified in this Climate Action Plan and make our vision of a sustainable Summit County a reality. We look forward to engaging residents, businesses, and visitors in these efforts. Moving forward, HC3 and the Collaborative members will work with each of the municipalities in Summit County to ensure this plan is adopted and supported within each jurisdiction. The Collaborative will also publish a progress report on the Climate Action Plan on an annual basis. Further, HC3 will complete an updated greenhouse gas emissions inventory every three years to determine whether we are on-track to meet our goals.

CLIMATE ACTION PLAN SECTORS



¹ Colorado Water Conservation Board. (2014). Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation. https://www.colorado.edu/climate/co2014report/Climate_Change_CO_Report_2014_FINAL.pdf

OUR COMMITMENT TO CURRENT AND FUTURE GENERATIONS

REDUCE EMISSIONS 50% BY 2030 AND 80% BY 2050

To achieve our emissions reduction goals, the Collaborative members identified impactful strategies to reduce our community's emissions. While the strategies selected are not projected to fully realize these goals, we remain committed to identifying additional strategies and technologies that can further help us reduce our emissions in the coming years.

Within the Climate Action Plan, emissions reduction strategies are grouped by the sector that they impact most directly. A brief description of the goals and key strategies within each sector are provided in the following pages.

RENEWABLE ENERGY SECTOR

VISION: Our communities will be powered in ways that protect our vibrant mountain resources.

SECTOR GOAL: Reduce emissions from electricity use 100 percent by 2035.



Our community-wide commitment to 100 percent renewable energy builds on existing initiatives from Arapahoe Basin, Summit County Government, the Town of Breckenridge, and Vail Resorts. By establishing a common goal across the county, our communities can work together to ensure we uphold our individual and mutual commitments.

KEY STRATEGIES

- Encourage all jurisdictions to adopt or support renewable energy goals and work with utilities to achieve these goals.
- Advocate at the state and local level for a rapid increase in the amount of renewable energy on the grid.
- Increase education about renewable energy and make it easier to install renewable energy on homes and businesses.



BUILDING ENERGY SECTOR

VISION: Our communities will maximize energy efficiency and lead in green design.

SECTOR GOAL: Reduce emissions from building energy use 21 percent by 2030 and 36 percent by 2050.

Through a combination of policies, education, and financial tools, we will ensure that residents, businesses and visitors benefit from more energy efficient and healthier buildings.

KEY STRATEGIES

- Adopt and enforce the most updated version of the International Energy Conservation Code for buildings and develop an above-building-code standard for new construction.
- Require energy reporting for large commercial buildings.



TRANSPORTATION SECTOR



VISION: Our communities will design multi-modal transportation systems that discourage fossil fuel consumption.

SECTOR GOAL: Reduce emissions from transportation 25 percent by 2030 and 91 percent by 2050.

To significantly reduce emissions in the transportation sector, our communities will ensure that multimodal connectivity and access are key considerations in community growth and expansion, increase the use of public transit systems, and support the adoption of electric vehicles. These actions will also have additional positive community impacts such as improved air quality through less tailpipe pollution, reduced congestion, and an improved visitor experience.

KEY STRATEGIES

- Support the adoption of more electric vehicles through expanded infrastructure and incentives.
- Provide incentives to use public transit within Summit County.



WASTE SECTOR



VISION: Our communities will conserve natural resources through striving for zero waste.

SECTOR GOAL: Reduce emissions from waste 50 percent by 2030 and 90 percent by 2050.



Summit County will expand waste reduction and recycling programs, encourage less consumption and more re-use, and make recycling and composting easy and economical for all residents and business owners. By doing this, our communities will reduce the use of natural resources and increase the landfill diversion rate.

KEY STRATEGIES

- Adopt a Save-As-You-Recycle ordinance across the county.
- Work with waste haulers to implement a curbside food scrap collection program.

FORESTS SECTOR



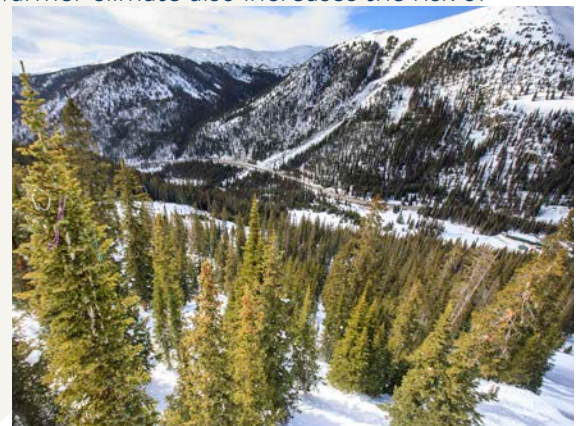
VISION: Our communities will value healthy forests and understand their beneficial climate and environmental impacts.

SECTOR GOAL: Maintain forest cover in Summit County and improve forest resilience to climate impacts.

In recent years, the county has seen an uptick in forest fires, and a warmer climate also increases the risk of pest infestation. Finding ways to improve the health of Summit's forests in the face of a changing climate can reduce these risks, while also preserving the trees' capacity to store carbon.

KEY STRATEGIES

- Improve the understanding of forest health in a changing climate.
- Educate and advocate for the important role of forests with regard to climate change.





SUMMIT COMMUNITY CLIMATE ACTION PLAN: STRATEGIES FOR A SUSTAINABLE FUTURE

PREPARED BY: SUMMIT CLIMATE ACTION COLLABORATIVE

VISION STATEMENTS

WE BELIEVE THAT OUR COMMUNITIES WILL...

- be powered in ways that protect our vibrant mountain resources.
- maximize energy efficiency and lead in green design.
- design multi-modal transportation systems that discourage fossil fuel consumption.
- conserve natural resources through striving for zero waste.
- value healthy forests and understand their beneficial climate and environmental impacts.
- inspire residents and visitors to reduce emissions through outreach and leadership.

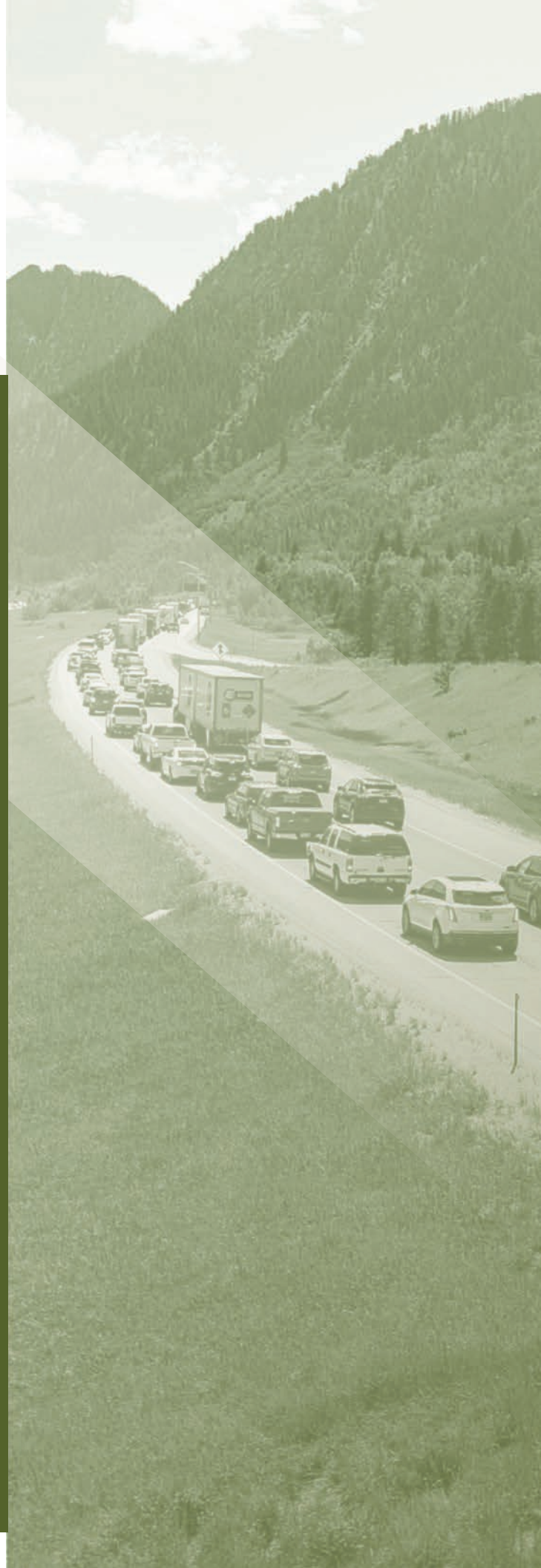


TABLE OF CONTENTS

ACKNOWLEDGMENTS	□ 1
EXECUTIVE SUMMARY	□ 4
INTRODUCTION	□ 9
GREENHOUSE GAS INVENTORY SUMMARY	□ 14
EMISSIONS REDUCTION GOALS	□ 17
RENEWABLE ENERGY	□ 19
BUILDING ENERGY	□ 23
TRANSPORTATION	□ 27
WASTE	□ 30
FORESTS	□ 32
COMMUNITY ENGAGEMENT	□ 35
MOVING FORWARD TOGETHER	□ 37

ACKNOWLEDGMENTS

The development of the Summit Community Climate Action Plan would not have been possible without the support and input of the Summit Climate Action Collaborative as well as expert group participants. Many of the organizations represented in the Collaborative also helped fund the project.



SUMMIT CLIMATE ACTION COLLABORATIVE MEMBERS

Arapahoe Basin

Mike Nathan

Breckenridge Grand Vacations

Emily Kimmel

Climate and Land Use Alliance

Donna Lee

Colorado Mountain College

Brooke Carson
Dave Askeland

Copper Mountain Resort

Jeff Grasser

High Country Conservation Center

Jen Schenk

Mountain Parks Electric

Chris Michalowski
Rob Taylor
Tom Sifers

Summit County Government

Dan Gibbs
Karn Stiegelmeier
Kate Berg
Michael Wurzel

Summit School District

Tracey Carish
Woody Bates

Town of Breckenridge

Erin Gigliello
Jeffrey Bergeron
Jessie Burley
Mark Truckey

Town of Blue River

Michelle Eddy

Town of Dillon

Jen Barchers
Ned West

Town of Frisco

Hunter Mortensen
Joyce Allgaier

Town of Silverthorne

Kelly Baldwin
Lina Lesmes

Vail Resorts

Brad Stewart
Ray Weller

Xcel Energy

Kelly Flenniken
Sharon Panas

*indicates Steering Committee Member

EXPERT GROUP PARTICIPANTS

BUILDING ENERGY

- Bruce Butler, Copper Mountain Resort
- Cody Jensen, High Country Conservation Center
- Eli Johnston, Town of Breckenridge
- Eric Westerhoff, Innovative Energy
- John McCormick, Town of Blue River
- Kasey Provorse, Energy Smart Colorado
- Matt Wright, Deeper Green Consulting
- Rick Weinman, Town of Frisco
- Stephen Oppito, Pinnacle Mountain Homes
- Tori Aidala, Norris Design

FORESTS

- Brad Piehl, JW Associates
- Brian Lorch, Summit County Government
- Cary Green, United States Forest Service
- Doozie Martin, Friends of Dillon Ranger District
- Howard Hallman, Forest Health Task Force
- Jason Lederer, Summit County Government
- Kim Schlaepfer, Walking Mountains Science Center
- Michael Wurzel, Summit County Government
- Scott Reid, Town of Breckenridge

MOBILITY AND TRANSPORTATION

- Curtis Garner, Summit Stage
- Jen Pullen, Town of Breckenridge
- Mark Johnston, Town of Breckenridge
- Michael Wurzel, Summit County Government
- Susan Lee, Town of Frisco
- Tom Gosiorowski, Summit County Government

PUBLIC ENGAGEMENT

- Adrienne Saia Isaac, National Ski Areas Association
- Austyn Dineen, Breckenridge Tourism Office
- Barry Rubenstein, High Country Conservation Center
- Brodie Boilard, Town of Frisco
- Haley Littleton, Town of Breckenridge
- Julie McCluskie, Summit School District
- Julie Sutor, Summit County Government
- Kerstin Anderson, Town of Dillon
- Kim Jardim, Town of Silverthorne
- Mikki Grebetz, Summit School District
- Russ Carlton, Vail Resorts
- Sarah Lopez, Summit County Government
- Stephanie Sweeney, Copper Mountain Resort
- Tara Galvin, The Summit Foundation
- Vanessa Agee, Town of Frisco

WASTE & RECYCLING

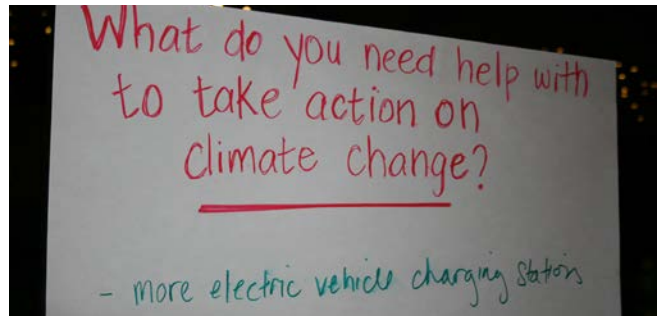
- Aaron Byrne, Summit County Government
- Rachel Zerowin, High Country Conservation Center
- Tom Gosiorowski, Summit County Government

WATER & SANITATION

- Jason Kruckeberg, Silverthorne/Dillon Joint Sewer Authority
- Jeff Goble, Town of Frisco
- Rob Martin, Copper Mountain Metro District
- Robert Buras, Town of Dillon

COMMUNITY PARTICIPANTS

On November 14th, 2018, over 60 community members attended an open house to add their thoughts, concerns and comments to the initial goals and strategies developed by the expert and Collaborative groups. This community feedback is included throughout the Climate Action Plan.



Barry Rubenstein

CONSULTANTS

Lotus Engineering and Sustainability facilitated the planning process and compiled this report, in partnership with High Country Conservation Center.

- Hillary Dobos, Principal and Co-Owner, Lotus Engineering and Sustainability
- Emily Artale, Principal Engineer and Co-Owner, Lotus Engineering and Sustainability
- Julia Ferguson, Senior Associate, Lotus Engineering and Sustainability

PROJECT MANAGER

- Jess Hoover, High Country Conservation Center



EXECUTIVE SUMMARY

SUMMIT COUNTY, LIKE ALL COMMUNITIES ACROSS THE WORLD, WILL BE IMPACTED SIGNIFICANTLY BY THE EFFECTS OF CLIMATE CHANGE.

Our way of life relies on the very environment in which we are located—the beautiful Rocky Mountains – and we recognize our responsibility to take a leading role in mitigating climate change. Average temperatures in Colorado have increased 2 degrees Fahrenheit over the past 30 years, with an additional 2 to 5 degrees’ warming expected by 2050.¹ These changes will affect the quality and length of ski seasons, and a change in visitation patterns would drastically affect our local economy and lifestyle.

Realizing our collective responsibility to mitigate greenhouse gas emissions and do our part to prevent climate change, High Country Conservation Center (HC3) convened the Summit Climate Action Collaborative in 2018. The Collaborative hired Lotus Engineering and Sustainability, LLC (Lotus) to support the development of the Summit Community Climate Action Plan and complete an initial community-wide greenhouse gas inventory for 2017. As with many communities,

emissions in Summit County are largely generated through energy use in buildings (65 percent) and transportation (33 percent). Lotus also worked with the Collaborative to help us understand strategies for reducing emissions, which were then modeled for greenhouse gas emission reduction potential.

The Collaborative group acknowledges that we do not yet have perfect solutions to reach the plan’s goals. However, we strongly believe in the ability of our community to work together to implement the strategies identified in this Climate Action Plan and make our vision of a sustainable Summit County a reality. We look forward to engaging residents, businesses, and visitors in these efforts. Moving forward, HC3 and the Collaborative members will work with each of the municipalities in Summit County to ensure this plan is adopted and supported within each jurisdiction. The Collaborative will also publish a progress report on the Climate Action Plan on an annual basis. Further, HC3 will complete an updated greenhouse gas emissions inventory every three years to determine whether we are on-track to meet our goals.

CLIMATE ACTION PLAN SECTORS



¹ Colorado Water Conservation Board. (2014). Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation. https://www.colorado.edu/climate/co2014report/Climate_Change_CO_Report_2014_FINAL.pdf

OUR COMMITMENT TO CURRENT AND FUTURE GENERATIONS

REDUCE EMISSIONS 50% BY 2030 AND 80% BY 2050

To achieve our emissions reduction goals, the Collaborative members identified impactful strategies to reduce our community's emissions. While the strategies selected are not projected to fully realize these goals, we remain committed to identifying additional strategies and technologies that can further help us reduce our emissions in the coming years.

Within the Climate Action Plan, emissions reduction strategies are grouped by the sector that they impact most directly. A brief description of the goals and key strategies within each sector are provided in the following pages.

RENEWABLE ENERGY SECTOR

VISION: Our communities will be powered in ways that protect our vibrant mountain resources.

SECTOR GOAL: Reduce emissions from electricity use 100 percent by 2035.



Our community-wide commitment to 100 percent renewable energy builds on existing initiatives from Arapahoe Basin, Summit County Government, the Town of Breckenridge, and Vail Resorts. By establishing a common goal across the county, our communities can work together to ensure we uphold our individual and mutual commitments.

KEY STRATEGIES

- Encourage all jurisdictions to adopt or support renewable energy goals and work with utilities to achieve these goals.
- Advocate at the state and local level for a rapid increase in the amount of renewable energy on the grid.
- Increase education about renewable energy and make it easier to install renewable energy on homes and businesses.



BUILDING ENERGY SECTOR

VISION: Our communities will maximize energy efficiency and lead in green design.

SECTOR GOAL: Reduce emissions from building energy use 21 percent by 2030 and 36 percent by 2050.

Through a combination of policies, education, and financial tools, we will ensure that residents, businesses and visitors benefit from more energy efficient and healthier buildings.

KEY STRATEGIES

- Adopt and enforce the most updated version of the International Energy Conservation Code for buildings and develop an above-building-code standard for new construction.
- Require energy reporting for large commercial buildings.



TRANSPORTATION SECTOR



VISION: Our communities will design multi-modal transportation systems that discourage fossil fuel consumption.

SECTOR GOAL: Reduce emissions from transportation 25 percent by 2030 and 91 percent by 2050.

To significantly reduce emissions in the transportation sector, our communities will ensure that multimodal connectivity and access are key considerations in community growth and expansion, increase the use of public transit systems, and support the adoption of electric vehicles. These actions will also have additional positive community impacts such as improved air quality through less tailpipe pollution, reduced congestion, and an improved visitor experience.

KEY STRATEGIES

- Support the adoption of more electric vehicles through expanded infrastructure and incentives.
- Provide incentives to use public transit within Summit County.



WASTE SECTOR



VISION: Our communities will conserve natural resources through striving for zero waste.

SECTOR GOAL: Reduce emissions from waste 50 percent by 2030 and 90 percent by 2050.



Summit County will expand waste reduction and recycling programs, encourage less consumption and more re-use, and make recycling and composting easy and economical for all residents and business owners. By doing this, our communities will reduce the use of natural resources and increase the landfill diversion rate.

KEY STRATEGIES

- Adopt a Save-As-You-Recycle ordinance across the county.
- Work with waste haulers to implement a curbside food scrap collection program.

FORESTS SECTOR



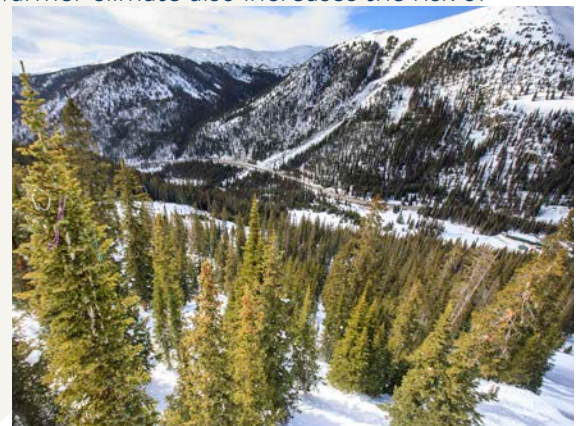
VISION: Our communities will value healthy forests and understand their beneficial climate and environmental impacts.

SECTOR GOAL: Maintain forest cover in Summit County and improve forest resilience to climate impacts.

In recent years, the county has seen an uptick in forest fires, and a warmer climate also increases the risk of pest infestation. Finding ways to improve the health of Summit's forests in the face of a changing climate can reduce these risks, while also preserving the trees' capacity to store carbon.

KEY STRATEGIES

- Improve the understanding of forest health in a changing climate.
- Educate and advocate for the important role of forests with regard to climate change.





INTRODUCTION

Hugh Carey

SUMMIT COUNTY IS AN AMAZING AND BEAUTIFUL PLACE. Our community is home to four internationally recognized ski resorts, year-round outdoor activities that attract millions of visitors annually, and stunning national forest. As a resort community heavily dependent on our natural resources, Summit County already has been and will continue to be significantly impacted by the onset of climate change.

Average temperatures in Colorado have increased 2 degrees Fahrenheit over the past 30 years, with an additional 2 to 5 degrees Fahrenheit warming expected by 2050.² In the fall when ski areas rely on snowmaking to cover the slopes, nighttime low temperatures are rising at a fast rate, delaying early season snowmaking and making it less efficient. At the end of the season, snow is melting 15 – 30 days earlier than in the late 1970s, cutting ski season short.³ Springtime snowpack levels have decreased at most monitoring sites since 1955, and most projections for the state’s river basins show decreasing annual runoff and less overall water supply.⁴ Even the trees are feeling the heat. Summit County’s forests have been especially affected by the mountain pine beetle – leaving our community at risk of significant fire danger and erosion.

DID YOU KNOW?

Because of increased temperatures, water flow in the Colorado River is anticipated to reduce up to 40 percent by 2100.⁶

If worldwide greenhouse gas emissions are not curtailed soon, Summit County could experience increased drought, heat, fire danger, and significantly more winter precipitation falling as rain rather than snow. In 2010, Colorado hosted 12 million skier visits (approximately 20 percent of total United States skier visits) which accounted for 37,000 employees earning \$1.2 billion in wages and contributed \$2.2 billion in value to the Colorado economy.⁵ A reduction in skiers and winter tourists due to decreased snow pack could drastically affect our local economy and lifestyle. Lastly, a growing population across the state and in Summit County will place increased pressure on water supplies and could create conflict between water-intensive industries like recreation, agriculture, and municipal use.

² Natural Resources Defense Council and Protect our Winters. (2012). Climate Impacts on the Winter Tourism Economy in the United States. http://protectourwinters.org/climate_report/report.pdf

³ Colorado Water Conservation Board. (2014). Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation. https://www.colorado.edu/climate/co2014report/Climate_Change_CO_Report_2014_FINAL.pdf

⁴ United States Environmental Protection Agency. (2016). What Climate Change Means for Colorado. <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-co.pdf>

⁵ Natural Resources Defense Council and Protect our Winters. (2012). Climate Impacts on the Winter Tourism Economy in the United States. http://protectourwinters.org/climate_report/report.pdf

⁶ Jonathan Overpeck and Brad Udall. (2017). Climate Change is Shrinking Our Rivers. <https://theconversation.com/climate-change-is-shrinking-the-colorado-river-76280>



Hugh Carey

A COMMUNITY EFFORT

This Climate Action Plan is a continuation of work undertaken in 2015 through Xcel Energy's Partners in Energy program. Through Partners in Energy, we laid the foundation for the Summit Climate Action Collaborative and created our community's first-ever greenhouse gas reduction goals. Other foundational documents include the 2009 Frisco CleanTracks Plan, the 2011 SustainableBreck Plan, and the 2011 Summit County Energy Action Plan. This Climate Action Plan builds upon that work by establishing larger goals and mapping out additional actions needed to create a more sustainable and resilient future.

EXPERT GROUPS

The planning process included input from five subject-specific expert groups. These groups included building energy, mobility and transportation, water and sanitation, forests, and public engagement. The expert groups generated and prioritized sector-based emissions reduction strategies for further consideration by the Collaborative members.

SUMMIT CLIMATE ACTION COLLABORATIVE

Over a six-month period, the members of the Summit Climate Action Collaborative were charged with further refining the strategies, setting targets and overarching greenhouse gas reduction goals, and creating vision statements for the Climate Action Plan. The Collaborative is committed to working together to achieve the plan's goals and will share responsibility for implementing the strategies outlined in the plan. High Country Conservation Center serves as the facilitator for this group.

Moving forward, each year the Collaborative will report publicly on the progress of this Climate Action Plan. In addition, HC3 will measure greenhouse gas emissions every three years to ensure that we are reducing emissions at the rate needed to achieve our goals.

VOICES FROM THE COMMUNITY

"Climate change is important to me because I've seen the climate changes firsthand in the 25 years I've lived in Summit County. It's concerning to think what the next 25 years will look like."

– Citizen Comment –

OUR GOAL IS TO REDUCE COMMUNITYWIDE EMISSIONS 50 PERCENT BY 2030 AND 80 PERCENT BY 2050.

WHY MORE ACTION IS NEEDED

Climate action is not new to Summit County. Our local citizens, municipalities, and companies have been working to decrease greenhouse gas emissions for several years, and we recognize that a stable climate is essential to ensure a vibrant, healthy, and economically viable future for Summit County.

Between 2017 and 2018 alone, communities and businesses in Summit County have made great strides in local climate action including:

- Summit County and the Town of Breckenridge committed to communitywide 100 percent renewable electricity by 2035.
- Vail Resorts, Inc. — owner of Breckenridge and Keystone Ski Resorts — announced its Commitment to Zero which includes zero net emissions by 2030, zero waste to landfill by 2030, and zero net operating impact on forests and habitat by 2030.
- Arapahoe Basin announced its goals to achieve carbon neutrality, a 75 percent waste diversion rate, and 100 percent renewable electricity all by 2025.
- Summit County voters passed a property tax to increase funding for waste reduction programs.
- The towns of Breckenridge and Frisco and Summit County Government joined the Compact of Colorado Communities, a consortium of local governments committed to addressing the impacts of climate change.

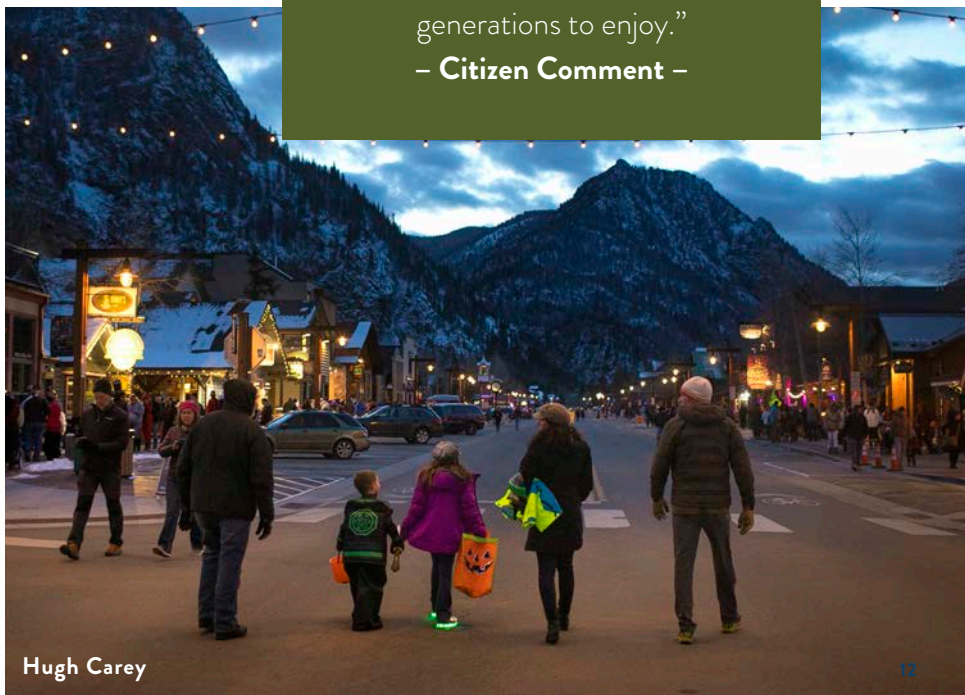
VOICES FROM THE COMMUNITY

“I care about leaving a healthy planet behind for future generations to enjoy.”

– **Citizen Comment** –



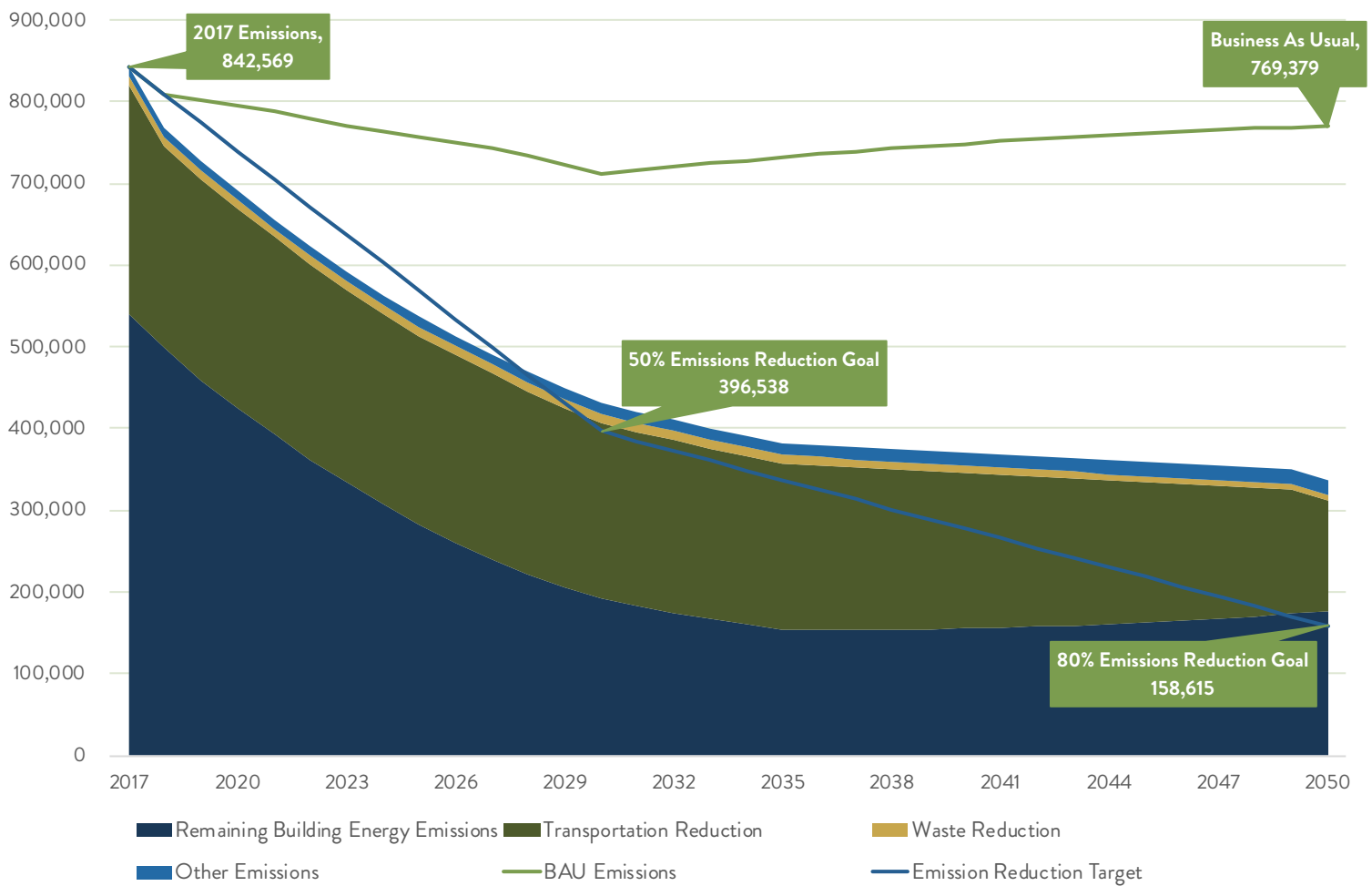
Innovative Energy



Hugh Carey

Yet without further action, the community’s greenhouse gas emissions will decrease only 3 percent by 2050. This decrease is due to Xcel Energy’s greenhouse gas reduction targets, which are included in the Business As Usual scenario shown in Figure 1. Building upon its commitment to providing 55 percent renewable energy by 2026, Xcel plans to reduce carbon emissions 80 percent by 2030 and to deliver zero-carbon electricity by 2050. In addition, the business-as-usual scenario includes the recently announced low-emission vehicle standards signed by Governor Hickenlooper in 2018.⁷ Despite Xcel Energy’s announcement and future low-emission vehicle standards, Summit County’s emissions are anticipated to stay relatively flat due to expected increases in population, development, and visitation.

FIGURE 1: GHG REDUCTIONS FROM STAKEHOLDER STRATEGIES (MTCO₂e)



⁷David Migoya. (2018). Colorado Will Adopt California-Style Low-Emission Vehicle Standards Under Hickenlooper Order. The Denver Post. <https://www.denverpost.com/2018/06/19/colorado-california-emission-vehicle-standards/>



GREENHOUSE GAS INVENTORY SUMMARY

GREENHOUSE GAS INVENTORY SUMMARY

In 2018, the Summit County community completed its first greenhouse gas inventory to better understand our emissions profile and to give insight to policies and programs that could help reduce emissions in our region.

The data indicate that our communities have unique challenges in terms of greenhouse gas emissions. For example, Summit County is among the most visited ski destinations in the world. Peak seasonal daily population is nearly 150,000 people – a stark increase over the year-round resident population of approximately 30,000.⁸ With millions of tourists visiting our community each year, it's likely that tourism has a larger impact on emissions than our year-round resident population.

DID YOU KNOW?

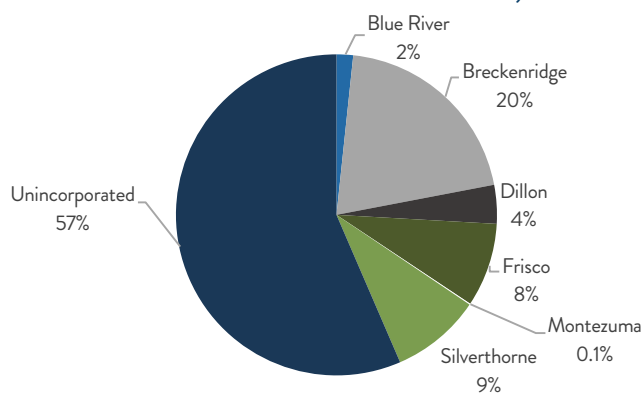
Flying from New York to Los Angeles (5,000-miles round-trip) produces more than two metrics tons of carbon dioxide. Based on U.S. averages, you generate the same amount of emissions after driving your car for five months.

The following are a few key takeaways from the inventory:

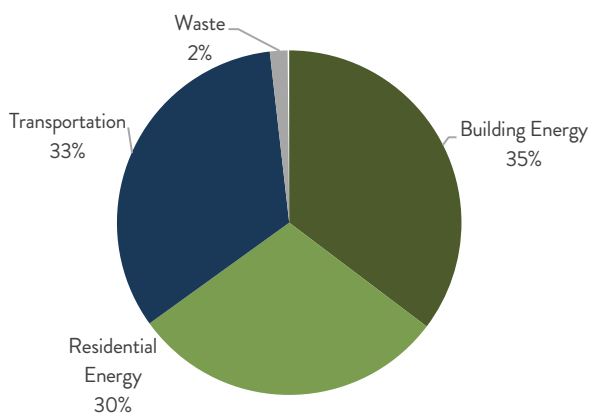
- 842,569 metric tons of carbon dioxide equivalent (MtCO₂e) were produced in 2017. This is equal to the emissions from 179,000 cars driven for a year.
- As shown in Figure 2, more than half of emissions are generated in unincorporated areas of Summit County, followed by the larger towns of Breckenridge, Silverthorne, and Frisco. The high level of emissions in unincorporated Summit County is driven by two main factors: These areas are where more than half of the county's full-time residents live and where most ski areas' energy use occurs.
- The majority of Summit County's emissions arise from three sectors: commercial energy, residential energy, and transportation (see Figure 3).
- As shown in Figure 4, the single largest source of emissions is electricity, followed by natural gas and mobile gasoline. In 2017, approximately 28 percent of electricity came from renewable resources.

⁸Summit County Government. (2013). Summit County Multi-Hazard Mitigation Plan.

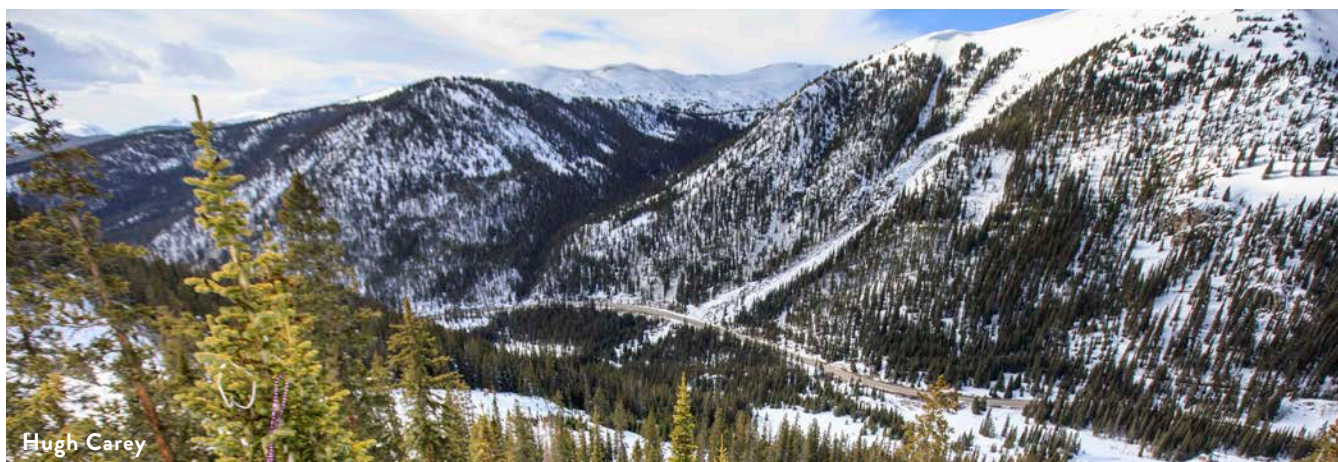
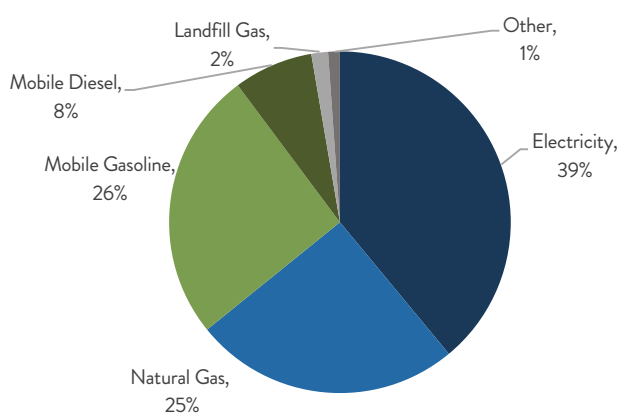
**FIGURE 2:
EMISSIONS BY MUNICIPALITY, 2017**



**FIGURE 3:
EMISSIONS BY SECTOR, 2017**



**FIGURE 4:
EMISSIONS BY SOURCE, 2017**



FORESTS

In addition to emissions from energy, transportation, and waste, Summit County’s forests play a role in the overall carbon budget of the county. On the plus side, preliminary estimates for the years 2001-2011 suggest the county’s forests sequester (that is, capture and store) around 10 percent of emissions from other sectors. However, there are emissions when development such as buildings, roads, or recreational areas result in a permanent loss of forest area. Emissions also occur from disturbances such as insects and fire, which may be temporary if the forest is restored. Forest greenhouse gas estimates will be updated in 2019 when new data becomes available.



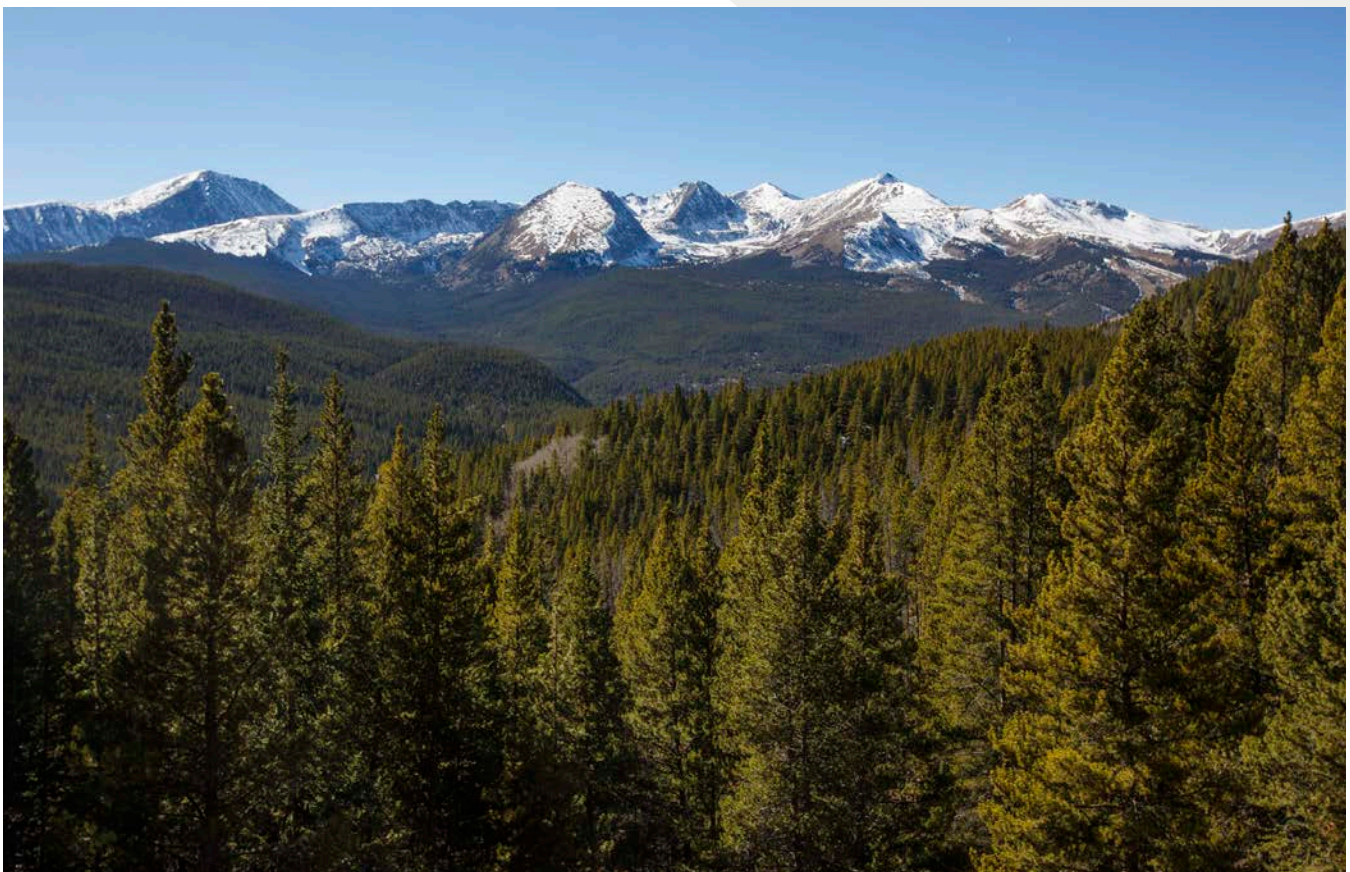
OUR EMISSIONS REDUCTION GOALS

Our goal is to reduce greenhouse gas emissions 50% by 2030 and 80% by 2050 over a 2005 baseline.

Many of the Collaborative members hope that we can achieve these goals sooner than the target years we have chosen. While the strategies outlined in this plan include actions necessary to meet our community goals, the Collaborative also recognizes that changes and innovations in technology and the economy over the coming years may make new strategies applicable to our community. We remain open, engaged, and informed of additional opportunities to drive greater emissions reductions.

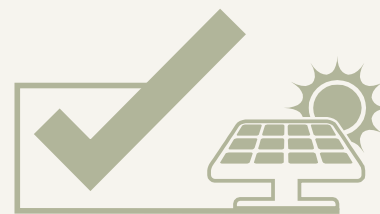
The strategies that follow are divided into the sectors they impact: 1) Renewable Energy, 2) Building Energy, 3) Transportation, 4) Waste, 5) Forests, and 6) Community Engagement. Throughout each section, strategies are listed in order of potential impact on emissions reductions, with the first strategy listed having the highest potential impact. Additionally, we have a set of strategies for Community Engagement, which, while not necessarily driving emissions reductions directly, will ensure greater success of our Climate Action Plan through engaging and empowering our whole community to participate. The Collaborative will begin implementing several of the plan's strategies in 2019, while others have a longer-term timeline.

Together, if all the strategies are implemented, the Summit County community could reduce emissions 60 percent by 2050 based on a 2005 baseline. In order to achieve our goal of reducing emissions 80 percent by 2050, will need to find cost-effective ways to decrease our dependence on natural gas heating.



Hugh Carey

RENEWABLE ENERGY



VISION: Our communities will be powered in ways that protect our vibrant mountain resources.

SECTOR GOAL: Reduce emissions from electricity 100 percent by 2035.

DID YOU KNOW?

Enough solar energy hits Colorado to power approximately 360 times the state's current electricity needs.⁹

WHERE WE ARE NOW

Currently, over 99 percent of the electricity used in Summit County is provided by Xcel Energy (Xcel). The remainder of homes and businesses are served by Mountain Parks Electric. In 2017, Xcel's energy mix consisted of 28 percent renewable resources. In the coming years, Xcel plans to rapidly increase the amount of renewable electricity on its grid, primarily from large-scale wind farms in the eastern plains of Colorado, as well as large solar installations. The company has committed to generating 55 percent renewable electricity by 2026 and zero-carbon electricity by 2050 (see Figure 6 and Figure 7).

FIGURE 6: 2017 XCEL ENERGY MIX

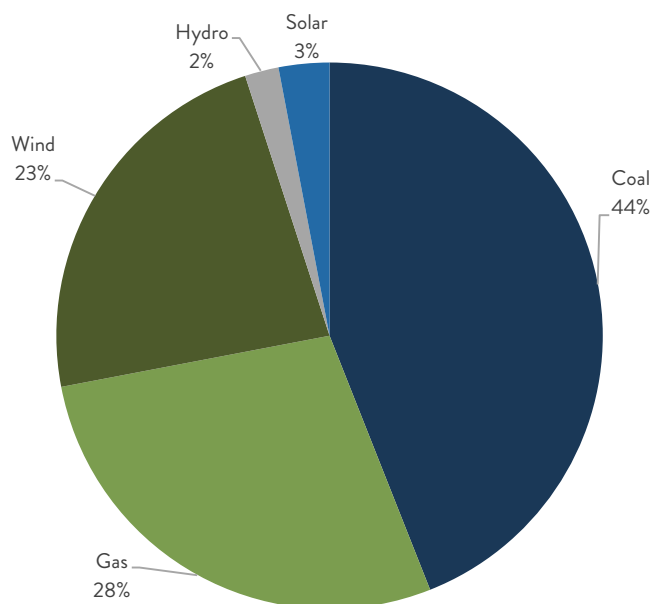
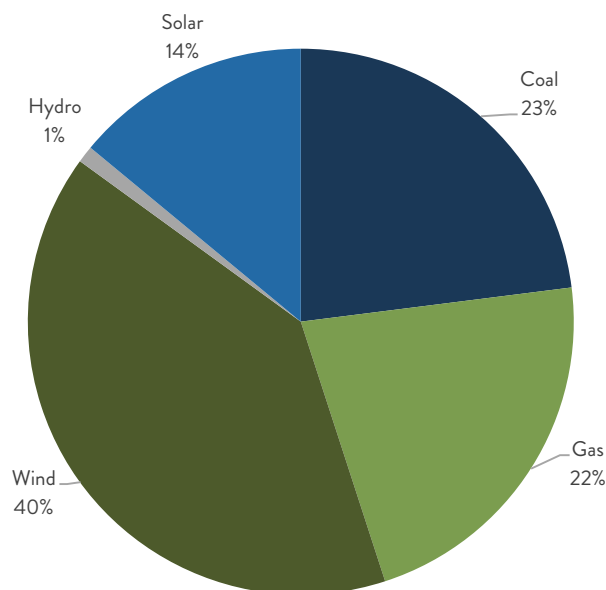


FIGURE 7: 2026 XCEL PROJECTED ENERGY MIX

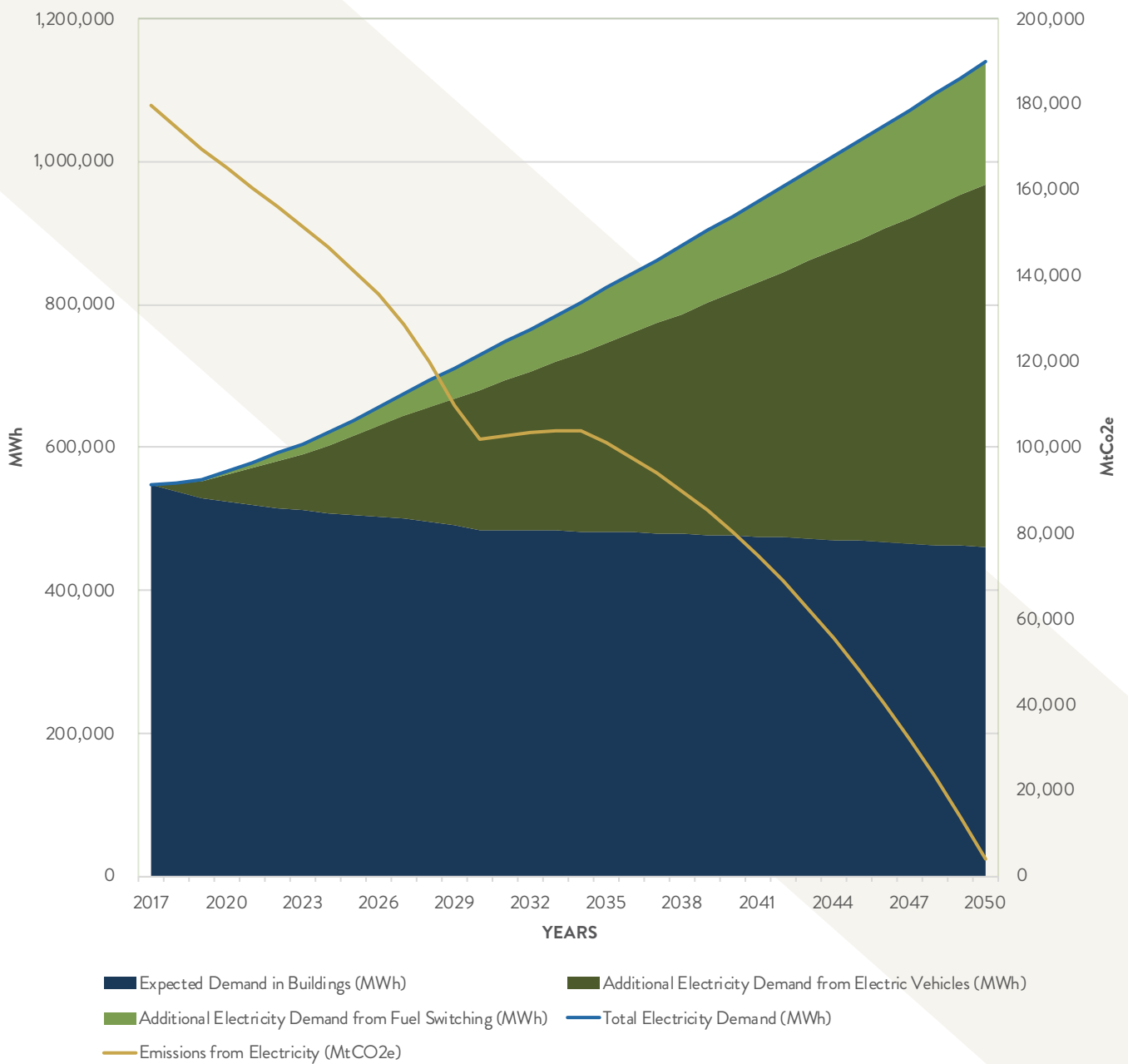


⁹Solar Energy Industries Association. Top Ten Solar States. <https://www.seia.org/research-resources/top-10-solar-states>

As shown in Figure 8, the demand for electricity in our communities is expected to rise. This projected increase is due to several factors, including:

- population growth, leading to more homes and businesses needing power;
- increased use of electric vehicles;
- increased snowmaking by the ski areas;
- increased demand for air conditioning during the summer months; and
- increased electric heating.

FIGURE 8: PROJECTED ELECTRICITY DEMAND



WHERE WE ARE HEADED

This community-wide commitment builds on existing initiatives within the county. Arapahoe Basin set a goal to be carbon neutral by 2025. Vail Resorts committed to 100 percent renewable electricity by 2020 and plans to be carbon neutral by 2030. The Town of Breckenridge committed to 100 percent renewable electricity for municipal operations by 2025 and 100 percent renewable electricity for the entire community by 2035. Summit County Government also set a goal of 100 percent renewable electricity by 2035. By establishing a common goal across the county, our community can work together to ensure we uphold our individual and mutual commitments. While renewable electricity goals are important to our community, they do not address emissions from natural gas use. To meet our goal, we need to decrease our reliance on natural gas as a heating fuel.

UNIQUELY SUMMIT COUNTY

- Summit County receives an average of 245 days of sunshine a year.
- In 2017, locally produced solar and wind systems within Summit County's borders accounted for less than one percent of community electricity use.

RENEWABLE ENERGY STRATEGIES

- Encourage all jurisdictions to adopt or support renewable energy goals.
- Advocate at the state level for a rapid increase in the amount of renewable energy on the grid.
- Develop a local renewable energy roadmap and/or feasibility study to ensure that we maximize the use of our local solar and wind resources.
- Execute a community campaign to increase solar installations through education and bulk purchase programs.
- Streamline the permitting process for renewable energy systems.
- Collaborate with utilities to achieve the goals of this plan.

VOICES FROM THE COMMUNITY

- “Government and public entities should lead by example.”
- “Promote WindSource and solar programs from Xcel to HOAs and out-of-state property owners.”



Bill Linfield



Summit County Government

BUILDING ENERGY



VISION: Our communities will maximize energy efficiency and lead in green design.

SECTOR GOAL: Reduce emissions from building energy use 21 percent by 2030 and 36 percent by 2050.

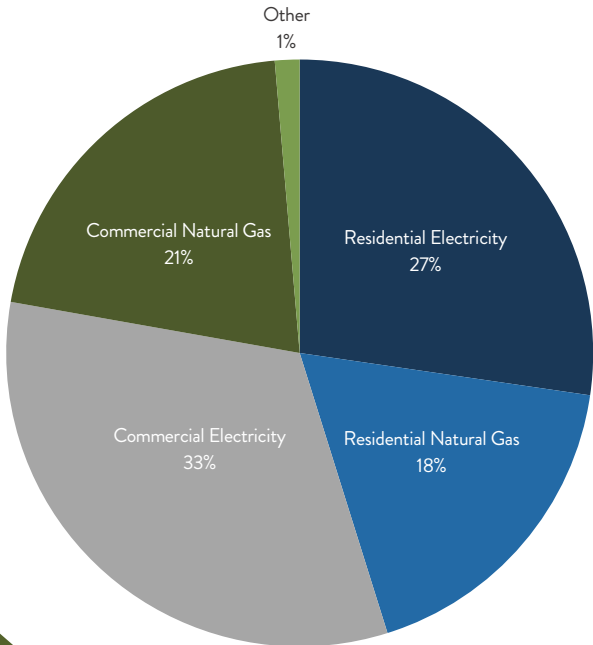
DID YOU KNOW?
In 2016, electricity use accounted for 28 percent of the United States' total emissions.¹⁰

WHERE WE ARE NOW

In 2017, buildings and ski area energy use in Summit County accounted for two-thirds of the community's emissions. Commercial buildings have slightly higher total emissions than residential buildings. The majority of building energy emissions comes from the use of electricity in buildings to power lights and other building systems. This is followed by the use of natural gas, primarily for heating. A small share of emissions result from diesel and propane used in generators and heaters (see Figure 9).

The Renewable Energy section of this report discussed the significant greenhouse gas impact of a clean and renewable-powered electricity grid. However, to achieve our goals, our community must decrease the use of natural gas, propane, and stationary diesel.

FIGURE 9: BUILDING ENERGY EMISSIONS



As a resort community, we experience massive population fluctuations throughout the year, and over two-thirds of homes are second homes. In addition, Summit County has dozens of hotels and energy-intensive tourism and recreation facilities. Together, this creates a unique set of challenges that requires a creative approach to reducing building energy emissions.

¹⁰ United States Environmental Protection Agency. Sources of Greenhouse Gas Emissions. <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

WHERE WE ARE HEADED

Through a combination of policies, education, and financial tools, we will ensure that homeowners, businesses, and visitors to our community are able to take advantage of the benefits of more energy efficient and healthier buildings. We have identified a set of strategies that will ensure we continue to reduce energy consumption in existing buildings and incorporate the most innovative green building standards into new developments.

While the strategies listed here cover a wide range of actions and will reduce community emissions significantly, we recognize that technological improvements in the coming years and a rapid transition to a renewable electricity grid may offer further opportunities to reduce building energy emissions.

UNIQUELY SUMMIT COUNTY

- Over one-third of homes in Summit County are heated with electricity. As we transition to 100 percent renewable electricity, these buildings will essentially become carbon-free.
- 68 percent of homes in Summit County are second homes.
- Summit residents that participate in the Energy Smart Colorado program realize an average utility bill savings of \$430/year.



BUILDING ENERGY STRATEGIES

The building energy sector strategies are organized by residential building strategies, commercial building strategies, and strategies that impact all buildings.

RESIDENTIAL BUILDING STRATEGIES

- **Explore the feasibility of requiring all new residential construction to be heated with electricity as there are no carbon-free alternatives to natural gas or propane.**
- **Develop a homeowner association, short-term rental, and second-homeowner energy efficiency program.**
We will develop a program that incentivizes, educates, and supports these property owners to improve their buildings' energy efficiency and install renewable energy.
- **Improve and expand existing residential energy efficiency programs to target more homes and gain greater energy savings.** Residents in our community can currently participate in Energy Smart Colorado and the Colorado Affordable Residential Energy programs to reduce energy use.
 - **Strategy Target:** Increase the number of homes that have participated in the Energy Smart Colorado program to 30 percent of all homes by 2025 and 55 percent of all homes by 2030.
 - **Strategy Target:** Increase the number of eligible households that have participated in the Colorado Affordable Residential Energy program to 20 percent of eligible households by 2025 and 25 percent of eligible households by 2030.
- **Host LED light bulb giveaways or exchanges for homeowners.**

COMMERCIAL BUILDING STRATEGIES

- **Amend local codes to require mandatory building retro-commissioning.** Retro-commissioning means that commercial property owners will assess their buildings' mechanical systems to ensure efficient operation.
- **Improve and expand existing commercial energy efficiency programs to target more businesses and gain greater energy savings.**
 - **Strategy Target:** Increase the number of commercial properties that have participated in ResourceWise and similar programs to 30 percent of all buildings by 2025 and 55 percent of all buildings by 2030.

- **Adopt local ordinances to require energy reporting for large commercial buildings.**

Owners of large commercial and industrial buildings will publicly report their energy use on an annual basis. Reporting programs can empower them to make smarter decisions about how their buildings and facilities run.

- **Strategy Target:** Achieve 80 percent compliance with mandatory reporting for all buildings over 15,000 square feet by 2025.
- **Strategy Target:** Achieve 100 percent compliance with mandatory reporting for all buildings over 10,000 square feet by 2030.

- **Promote energy efficiency and renewable energy for school and government buildings.** Our communities will lead by example by promoting and prioritizing energy efficiency and green building in new construction and major renovations of school and government facilities.

VOICES FROM THE COMMUNITY

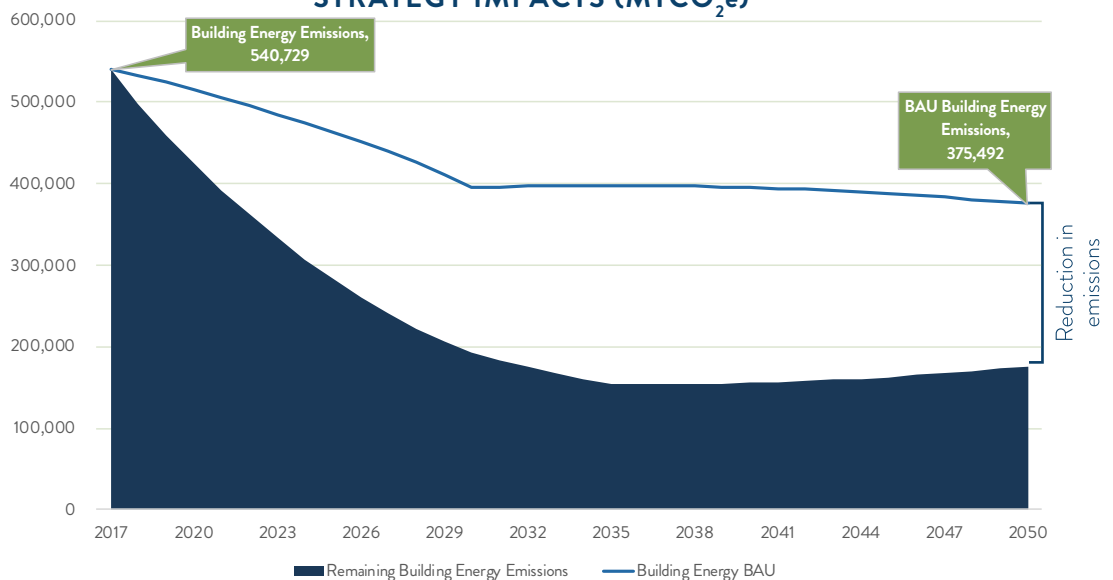
- “Commit to renewable resources and support HC3’s home and business energy audits.”
- “New building codes to mandate solar and energy efficient homes and commercial buildings.”

STRATEGIES IMPACTING ALL BUILDINGS

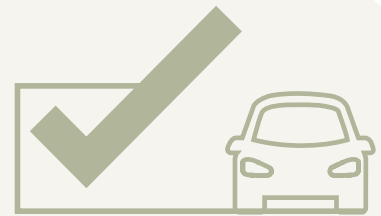
- **Develop an above-building-code standard for new construction.**
- **Adopt and enforce the most updated version of the International Energy Conservation Code for buildings.** The Summit County community will continue to adopt new international codes every six years.
- **Develop a long-term financing mechanism to provide incentives for reducing energy use and greenhouse gas emissions in buildings.**

As shown in Figure 10, by pursuing the above strategies our community will reduce building sector emissions by 21 percent by 2030 and 36 percent by 2050.

FIGURE 10: BUILDING ENERGY BUSINESS AS USUAL VS. STRATEGY IMPACTS (MTCO₂e)



TRANSPORTATION



VISION: Our communities will design multi-modal transportation systems that discourage fossil fuel consumption.

SECTOR GOAL: Reduce emissions from transportation 25 percent by 2030 and 91 percent by 2050.

DID YOU KNOW?

Even though the current electric grid isn't 100 percent carbon free, electric cars produce less than half of the lifetime emissions as conventional gasoline-powered vehicles.¹¹

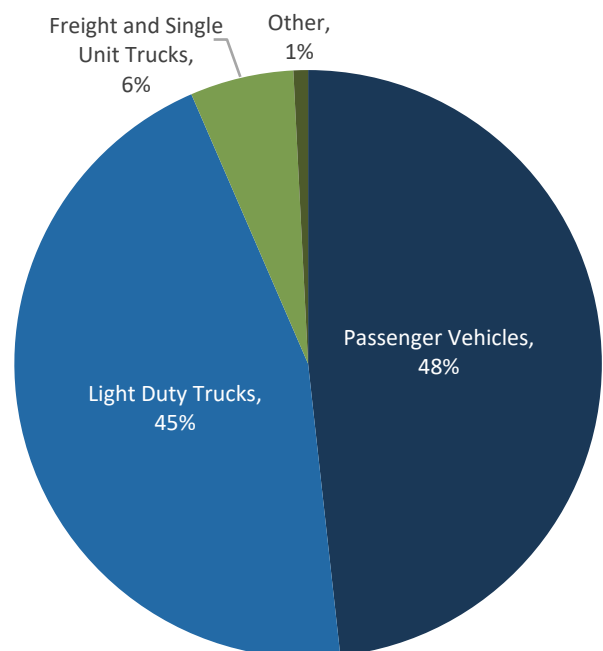
WHERE WE ARE NOW

Emissions from transportation activities account for one-third of our total community emissions. Over 90 percent of transportation emissions come from driving gas and diesel-powered cars and trucks.

WHERE WE ARE HEADED

To significantly reduce emissions in the transportation sector, our communities will ensure that multimodal connectivity and access are key considerations for community growth and expansion, increase the use of public transit systems, and support the deployment and adoption of electric vehicles. These actions will also have additional positive community impacts such as improved air quality, reduced congestion and an improved visitor experience.

FIGURE 11: VEHICLE MILES TRAVELED BY VEHICLE TYPE



¹¹ Steve Hanley. (2018). Electric Car Myth Buster - Well-to-Wheel Emissions. <https://cleantechnica.com/2018/02/19/electric-car-well-to-wheel-emissions-myth/>



UNIQUELY SUMMIT COUNTY

- There were 49 electrical vehicles registered in Summit County in 2017. According to the Colorado Electric Vehicle Plan, this could increase to 7,000 by 2030 under a high-adoption scenario.

Hugh Carey

TRANSPORTATION STRATEGIES

- **Support the adoption of more electric vehicles through the development of a community-wide Electric Vehicle Readiness Plan, as well as expanded infrastructure and incentives.**
 - **Strategy Target:** Increase the share of electric vehicles driving on Summit County roads to 30 percent of all vehicles by 2030 and 60 percent of all vehicles by 2050.
- **Switch government fleets to electric vehicles within the replacement cycle and when appropriate models are available.** Local governments will train fleet technicians to ensure most maintenance can be performed in-house.
- **Promote clean fuels and alternative fueling infrastructure for heavy-duty vehicles.** We will work with partner agencies to promote and encourage the development of clean fueling stations for heavy-duty vehicles.
 - **Strategy Target:** Increase the percentage of heavy-duty vehicles using alternative fuels to 30 percent by 2030 and 50 percent by 2050.
- **Discourage single occupancy vehicles through through incentives, policies, and participation in regional initiatives.**
- **Provide incentives to use public transit within Summit County.** Summit County has an expansive and free public transit system available to both residents and visitors. We will work to ensure that transit is easy to access and has routes and time schedules that are convenient for our community and visitors.
 - **Strategy Target:** Increase the ridership of public transit systems in Summit County 50 percent by 2030 and 100 percent 2050 (over a 2017 baseline).
- **Develop a Summit County bicycle and walking master plan.**
- **Partner with utilities to ensure grid capacity for increased electric vehicle charging.**

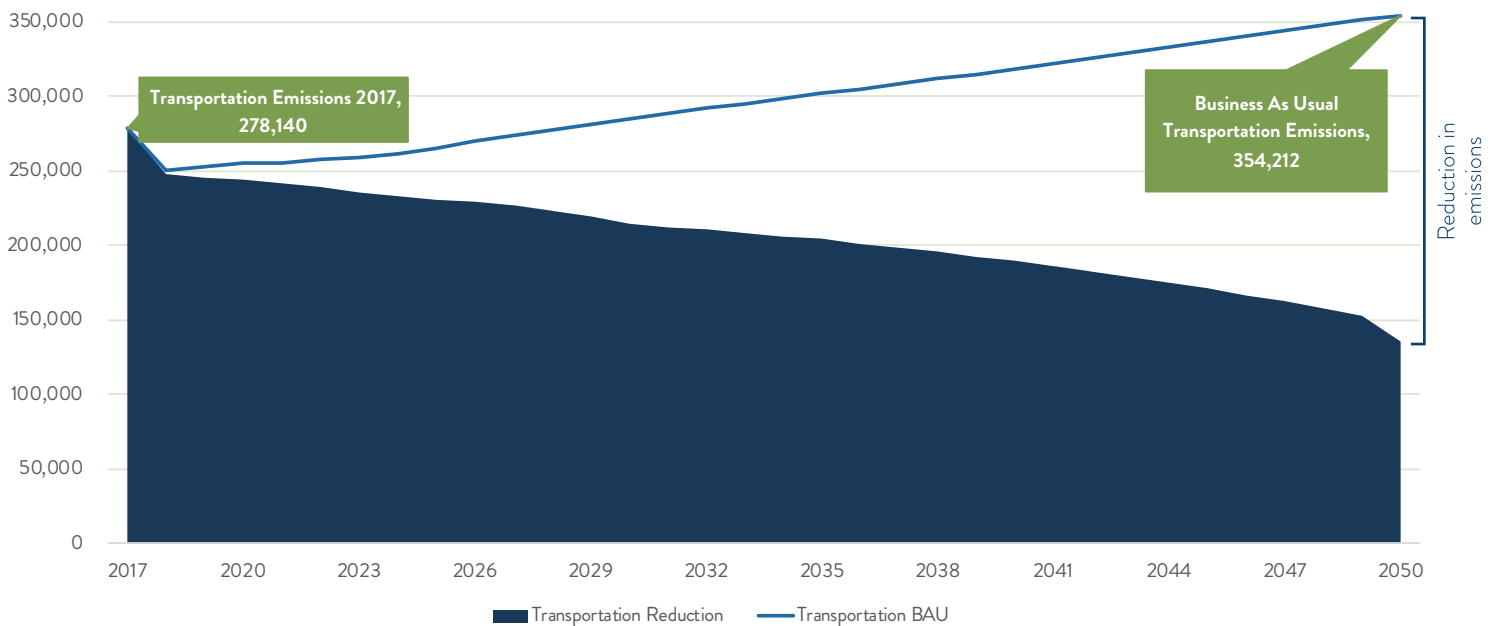
VOICES FROM THE COMMUNITY

- “Frequent, reliable, and affordable connection from Front Range to Summit County.”
- “Promote walking, biking, taking the bus, and carpooling.”



As shown in Figure 12, the combined impact of the above strategies is likely to result in a 25 percent reduction in total community emissions by 2030, and a 91 percent reduction by 2050. Additionally, we will continue to explore further opportunities to reduce emissions from the transportation sector through improved technology and innovative projects.

FIGURE 12: TRANSPORTATION: BUSINESS AS USUAL VS. STRATEGY IMPACTS (MTCO₂e)





WASTE

VISION: Our communities will conserve natural resources through striving for zero waste.

SECTOR GOAL: Reduce emissions from waste 50 percent by 2030 and 90 percent by 2050.

DID YOU KNOW?

Nationally, Americans compost or recycle 34 percent of our waste. In Summit County, we recycle or compost only 21 percent of our waste.¹²

WHERE WE ARE NOW

The Summit County Resource Allocation Park (also known as SCRAP) hosts a landfill, recycling processing center, and commercial composting operation. In 2017, Summit County residents and visitors landfilled over 50,000 tons, recycled 5,000 tons, and composted 8,700 tons for a total landfill diversion rate of 21 percent. Waste accounts for only two percent of the community's emissions.

WHERE WE ARE HEADED

With the passing of Ballot Measure 1A in 2018, the SCRAP will increase local opportunities for recycling and composting. By encouraging less consumption and more re-use, and making recycling and composting easy and economical for all residents and business owners, our community will reduce emissions and our use of natural resources.

UNIQUELY SUMMIT COUNTY

- The SCRAP accepts electronic waste and household hazardous waste free of charge for residents.
- When waste decomposes at higher altitudes, it produces less methane than at sea level.

¹² United States Environmental Protection Agency. (2016). Municipal Solid Waste. <https://archive.epa.gov/epawaste/nonhaz/municipal/web/html/>

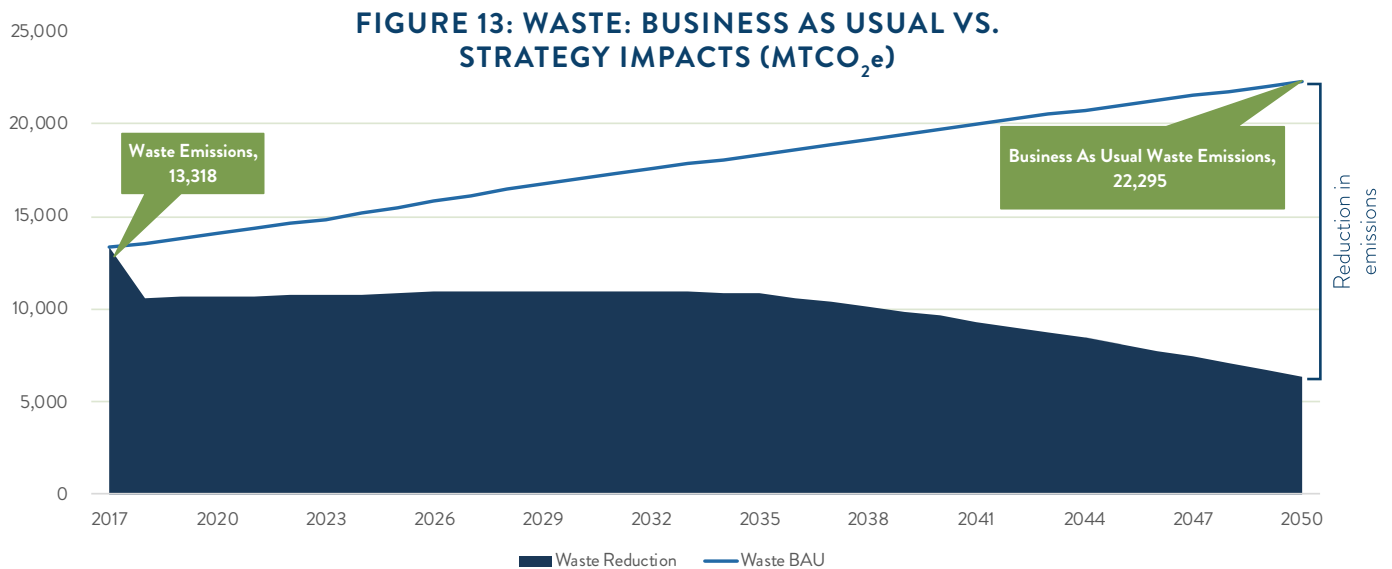
WASTE STRATEGIES

- **Adopt a Save-As-You-Recycle ordinance across the county.** Save-As-You-Recycle will provide financial incentives for people to reduce their landfilled waste by recycling and composting more.
- **Consider implementing landfill bans on easily recycled items.** For example, in Fort Collins cardboard must be recycled or reused. It is not allowed in the landfill.
- **Work with waste haulers to implement a curbside food scrap collection program.**
- **Increase the number of glass collection sites and types of materials accepted at recycling centers.**
- **Require new construction to include space for recycling and food scrap collection.**
- **Create codes to require recycling at new construction sites.** Many construction materials can be recycled, reused, or repurposed. We will require all new construction to prioritize recycling and reuse over landfilling the waste that is created on-site.
- **Incentivize deconstruction and reuse instead of demolition in construction and demolition projects.**
- **Create local markets and infrastructure for used asphalt and concrete.**
- **Encourage local governments to demonstrate leadership by providing zero waste stations in all facilities as well as creating and enforcing zero waste event requirements.**

VOICES FROM THE COMMUNITY

- “Create a curbside food scrap collection program.”

As shown in Figure 16, the combined impact of the above strategies is likely to result in a 42 percent reduction in total waste emissions by 2030, and a 90 percent reduction by 2050. Additionally, we will continue to explore new opportunities for recycling and composting to further reduce emissions from the waste sector.



FORESTS



VISION: Our communities will value healthy forests and understand their beneficial climate and environmental impacts.

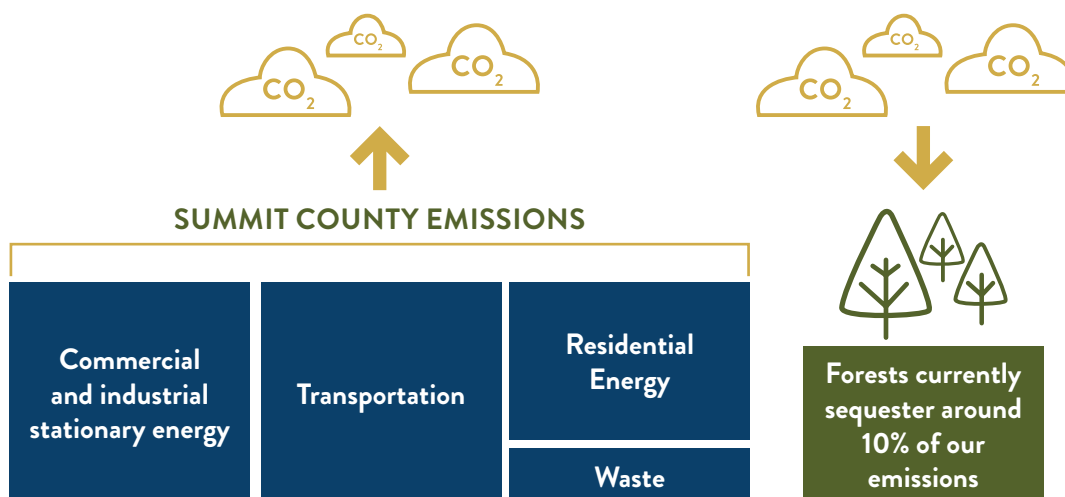
SECTOR GOAL: Maintain forest cover in Summit County and improve forest resilience to climate impacts.

WHERE WE ARE NOW

Currently, 53 percent of Summit County is forested, sequestering approximately 10 percent of the county’s gross emissions. Much of this forest land (roughly 170,000 acres) is managed by the US Forest Service (USFS). Around 15 percent of Summit County forests are outside of federal lands and managed by Summit County Government or local towns or private land owners.

Between 2001 and 2011, our community lost nearly 8,300 acres of live trees. Most of this loss was due to the mountain pine beetle. Federal forest land that is subject to natural disturbance (such as pest or fire) will likely regenerate over time, and the USFS may replant areas to accelerate forest restoration. The USFS also monitors federal forest land after treatment—for example, clear cuts that occur in beetle infected areas to manage fuel load and create defensible space—and ensures forests in such areas are restored in ways that promote safety and forest health.

Over the same time period, there was a loss of over 1,880 acres of non-federal forest. Around 90 percent of this loss was likely due to beetle disturbance, while 10 percent was due to increased development. When forests are cut, this results in the release of greenhouse gas emissions (as the carbon they stored goes to the atmosphere), as well as lost future sequestration—as forests can sequester carbon for long periods of time.



WHERE WE ARE HEADED

There are two major trends impacting the forests of Summit County: development and climate change. Through a combination of efforts, the community will strive to maintain its forest and tree canopy cover despite expected growth in population over the coming years. This will require consideration of how to ensure forest areas lost to disturbance are restored, while managing the expected development and expanding urban-rural boundaries in coming years.

In addition, Summit County forests will be increasingly impacted by climate change. In recent years the county has seen an uptick in forest fires, and a warmer climate also increases the risk of pest infestation. Finding ways to improve the health of Summit's forests in the face of a changing climate can reduce these risks to our forests.

DID YOU KNOW?

A tree can sequester up to 400 pounds of carbon dioxide over 25 years. At that rate, it takes 80 trees 25 years to absorb the same amount of carbon emissions an average American produces in one year.

UNIQUELY SUMMIT COUNTY

- Summit County citizens appreciate and love forests! The beauty and recreation that the White River National Forest provides is a key reason why people live in Summit County.
- Trees in Summit County grow slowly—due to our altitude, precipitation, and colder average temperatures—so the carbon we lose when cutting down trees is not quickly regained. Most of Summit County's forests have been storing carbon for over a century.
- Summit County and the Town of Breckenridge have active, well-funded Open Space and Trails departments, managing and protecting nearly 20,000 acres of land across the county.
- Summit County is one of the first communities in the country to include forests in their GHG inventory and Climate Action Plan, recognizing the important role forests play in regulating our climate.

¹³ Bob Schildgen. (2016). How much carbon do trees really store? <https://www.sierraclub.org/sierra/2016-2-march-april/ask-mr-green/how-much-carbon-do-trees-really-store>

FOREST STRATEGIES

- **Develop and implement a community-wide forest management plan.**

Many communities have a forest or tree management plan—not only to create a healthier environment, but also a friendlier, more beautiful setting. Increasingly, tree management is seen as a critical piece of building sustainable communities. A community-wide management plan could:

- Encourage municipalities to set goals for maintaining forest and tree canopy.
- Expand the use of county’s Transferable Development Rights (TDR) program in the Lower Blue, Snake, and Tenmile river basins by encouraging the towns of Dillon, Frisco, and Silverthorne to use TDRs as a tool for protecting forested lands from development.
- Develop ways to incentivize tree planting on private property.
- Increase the number of street trees and reevaluate trees and landscaping in parks.
- Continue to monitor forest cover on non-federal lands and develop an urban tree inventory.

- **Improve the understanding of forest health in a changing climate.**

Summit County forests are already experiencing the impacts of climate change. More work is needed to understand what measures will best promote healthy forests for generations to come. A local collaborative, the Forest Health Task Force, is dedicated to promoting forest health in Summit County. Actions undertaken may include:

- Develop a Forest Health Index to monitor factors that affect the health of Summit County’s forests and to take action when needed to preserve the many services forests provide to our community.
- Conduct research on Summit County’s forest ecology in a changing climate and better understand how to promote carbon sequestration and health of future forests.

- **Educate and advocate for the important role of forests with regard to climate change.**

While most people who live and visit Summit County appreciate forests for the recreation and beauty they provide, fewer are aware of the role forests play in mitigating climate change. Therefore, Summit County will work to:

- Educate the community and visitors about the benefits of healthy forests, including the carbon sequestration they provide.
- Advocate for forest protection at the federal, state, and local levels.

By taking the steps above, Summit County can expand the ways in which our community values forests. These actions not only “lock up” the carbon stored within our forests, but also ensure that trees continue to sequester carbon well into the future—helping Summit County reach its climate change mitigation goals.

VOICES FROM THE COMMUNITY

- “Incorporate climate change and our forests’ health into messaging.”
- “Plant new diverse varieties of trees that adapt to our changing climate.”



COMMUNITY ENGAGEMENT

COMMUNITY ENGAGEMENT

VISION: Our communities will inspire residents and visitors to reduce emissions through outreach and leadership.

We believe in a bright, healthy, and sustainable future for Summit County; however, we cannot do it without our community's help. We recognize that this Climate Action Plan will only be impactful if we engage and empower the entire community, including visitors, to be a part of this effort. If successful, the results will be far-reaching, and our community will be:

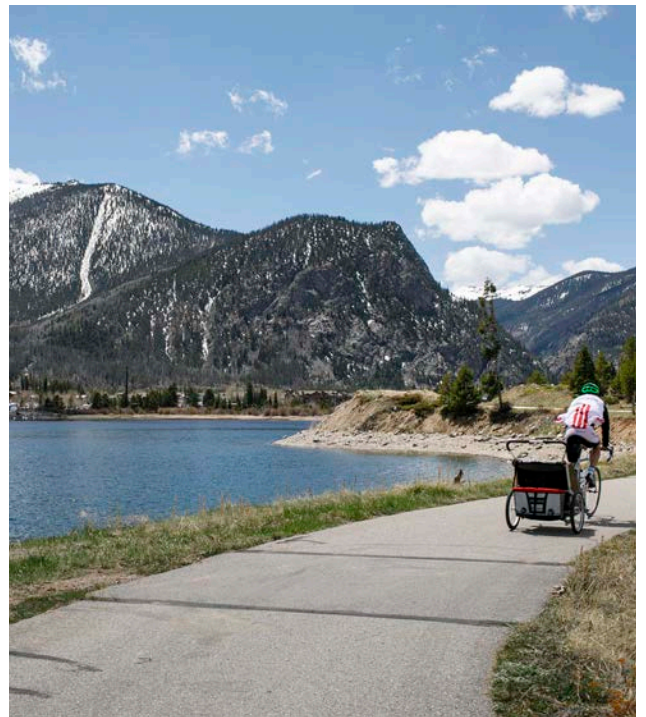
- healthier due to less air pollution and congestion, with greater opportunities for safe multimodal travel;
- more informed and engaged about climate, sustainability, and energy issues;
- more affordable due to more energy efficient housing and businesses; and
- empowered to create a vibrant and sustainable Summit County for current and future generations.

COMMUNITY ENGAGEMENT STRATEGIES

- **Collaborate with ski areas and local towns to promote the Climate Action Plan and implement strategies to educate millions of visitors.** We hope that visitors will be inspired to take these strategies and lessons learned back to their own communities to further expand the benefits of climate action.
- **Create an outreach campaign to engage locals in climate action.** Working collaboratively, we will develop an engaging, empowering, and relevant outreach campaign that helps locals understand and participate in these efforts.
- **Provide free workshops to help residents learn how to reduce their carbon footprints.**
- **Develop programs to engage K-12 and college students on climate change and solutions.** We will work with the Summit School District, Colorado Mountain College, and other relevant organizations to develop programs that educate and engage students of all ages.
- **Utilize special events to share messages, provide resources, and engage participants in carbon reduction strategies.** We will be an active participant in community and events that occur throughout Summit County in order to engage people, provide resources, and ensure that implementation of our Climate Action Plan is a community effort.



MOVING FORWARD TOGETHER



Hugh Carey

MOVING FORWARD TOGETHER

As a resort community that hosts millions of visitors each year, the Summit Climate Action Collaborative believes it is our responsibility to demonstrate leadership in the fight against climate change. This plan identifies strategies and actions that will lead to significant emissions reductions, ensuring that we do our part to mitigate the most severe effects of climate change. Our Collaborative strongly believes in the ability of our communities to work together to implement the strategies identified in this Climate Action Plan and make our vision of a sustainable Summit County a reality. We look forward to engaging residents, businesses, and visitors in these efforts so that we can create a healthy and sustainable future for all.

Moving forward, HC3 will work with each of the municipalities in Summit County to ensure this plan is adopted and supported within each jurisdiction. Many of the Collaborative members that helped create this plan have agreed to participate in working groups to develop and implement the policies, programs, and initiatives identified in the plan. Each year, the Collaborative will publish a progress report on the Climate Action Plan. Further, HC3 will complete an updated greenhouse gas emissions inventory every three years to determine whether we are on-track to meet our goals.

In Summit County, our way of life is directly tied to the health of our environment. While we recognize the significant effort required to fully implement this Climate Action Plan, we are committed to protecting our mountain community for generations to come.



HIGH COUNTRY
CONSERVATION CENTER





Summit Community Climate Action Plan

Town of Frisco
March 12, 2019



Why a Climate Action Plan?

- Colorado is one of the fastest-warming states in the country
- If we do nothing...
 - Denver will be the new Albuquerque
 - Only 43% of wintertime precipitation will fall as snow in the Upper Colorado watershed





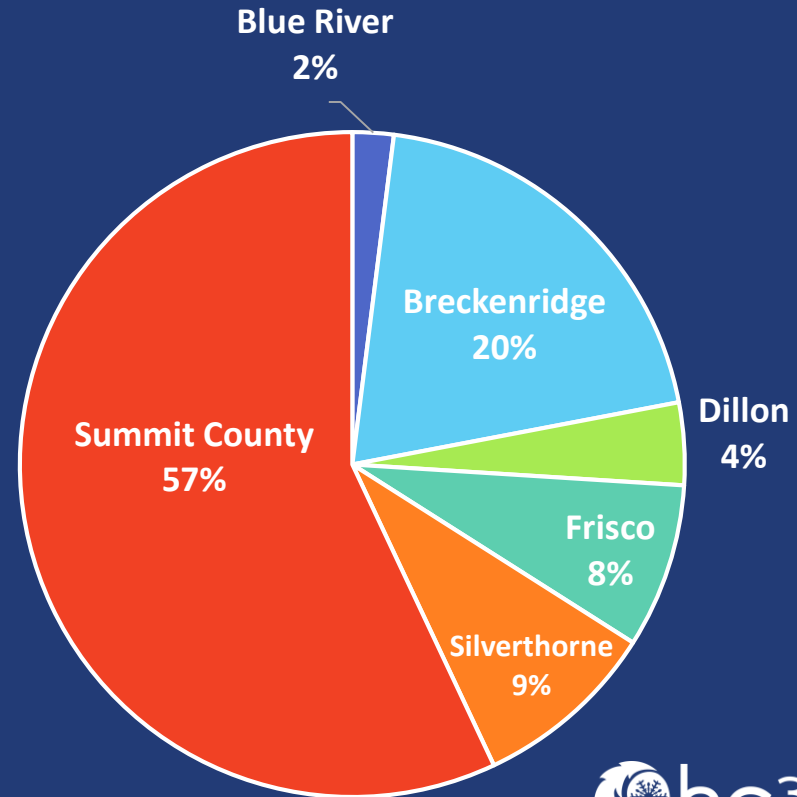
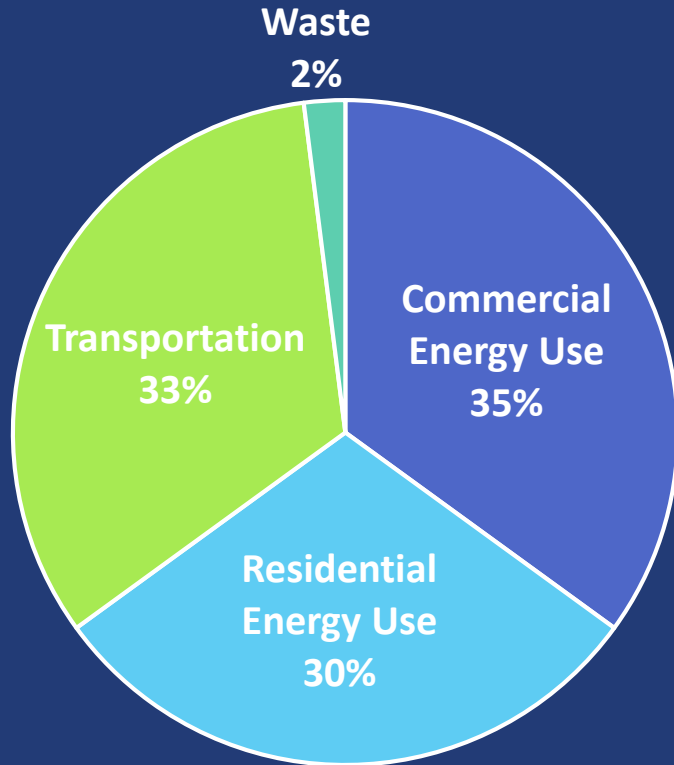
SUMMIT COUNTY
COMMUNITY CLIMATE ACTION PLAN:
STRATEGIES FOR A SUSTAINABLE FUTURE

Climate Action Plan

- GHG Inventory Results
- Goals and Strategies
 - Renewable energy
 - Building energy
 - Transportation
 - Waste
 - Forests
 - Community Engagement

Summit County GHG Emissions

GHG Emissions by Town



Climate Action Goals

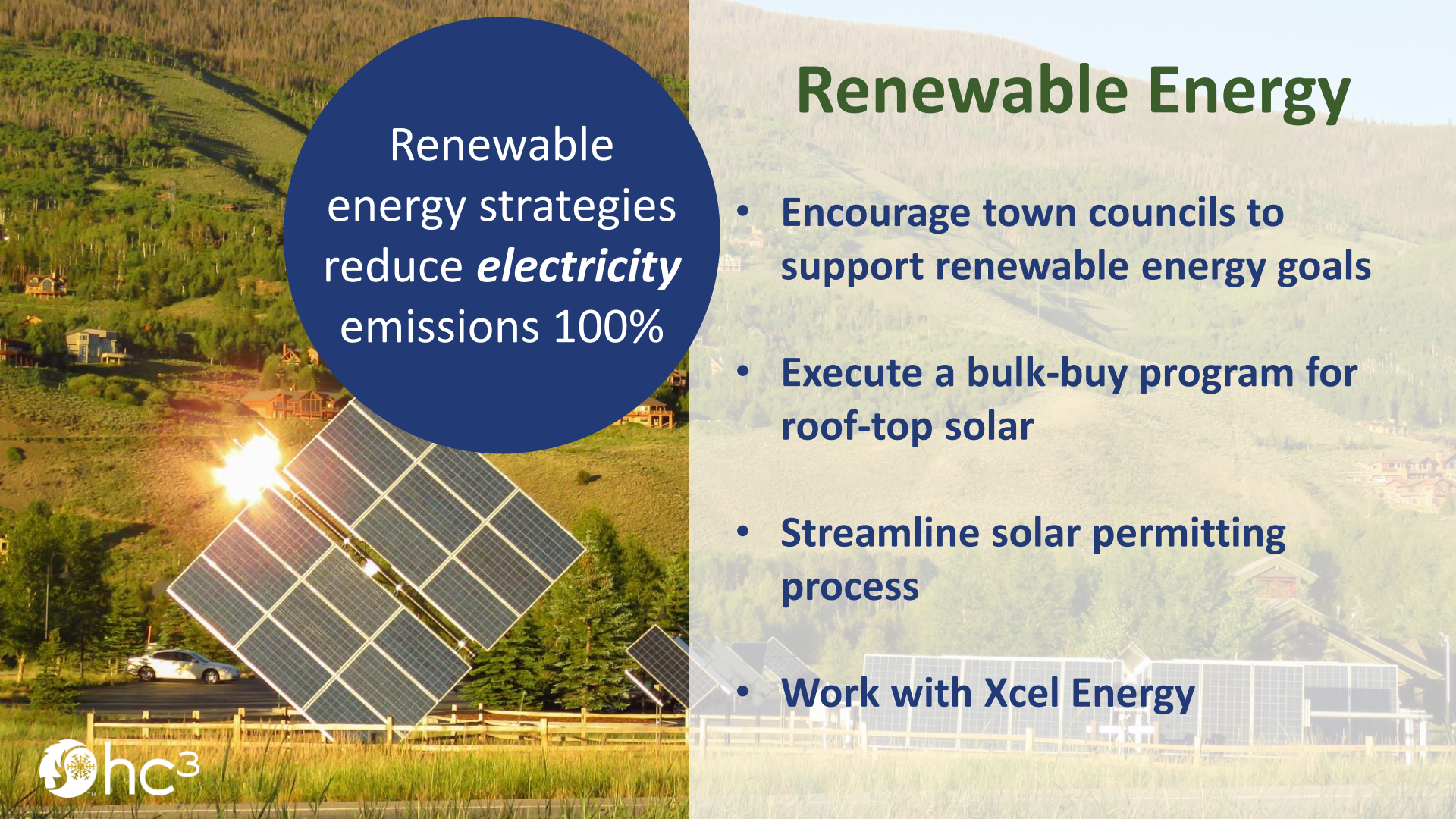
Reduce
countywide
emissions...

50% by 2030
80% by 2050





CAP Strategies & Impacts



Renewable
energy strategies
reduce *electricity*
emissions 100%

Renewable Energy

- Encourage town councils to support renewable energy goals
- Execute a bulk-buy program for roof-top solar
- Streamline solar permitting process
- Work with Xcel Energy

Building Efficiency

- Adopt 2018 IECC code set
- Develop an above-building-code standard for new construction
- Host LED bulb giveaways
- Local governments establish baseline energy use

Building efficiency strategies reduce *building* emissions 36%

Transportation

- Create regional EV readiness plan
- Develop info packet about EVs for fleet managers
- Host discussion with public transit managers about making buses more bike and ski friendly

Transportation strategies reduce *transportation* emissions 91%

Waste

- Develop Silverthorne recycling center
- Launch free food scrap recycling program
- Mattress and carton recycling
- Install glass depots at more locations around the county

Waste strategies reduce *waste* emissions 90%

Forests

Forests store
10% of Summit
County's
emissions

- Research best practices for forest protection in local codes
- Share strategies with Forest Health Task Force
- Explore collaboration with other groups



Be Like Doc PJ

Keep Summit Cool for climate change.



Keep Summit Cool

- Campaign urges people to “Be like...” local Summit County residents
- KeepSummitCool.org
 - Climate Action Updates
 - Opportunities for personal engagement
- 2019 Events
 - Climate Change: Simple, Serious, Solvable – April 3, CMC Breckenridge
 - EV Ride & Drive – April 24, CMC Breckenridge

This is Doc PJ. These are old-school straight skis. This is an old-school bike. Be like PJ and ride your bike to reduce carbon emissions and take action for the climate. Learn how you can be like PJ and take action. Visit: KeepSummitCool.org

A project of the Summit Climate Collaborative.

#BeLocal #KeepSummitCool



Top Climate Action Strategies for Town of Frisco

Building Energy

- Adopt 2018 International Energy Conservation Code
- Support and participate in efforts to update the Summit Sustainable Building Code, including requiring all new construction be solar and EV ready
- Begin tracking municipal energy use and identify buildings for energy efficiency improvements

Waste

- Install zero waste stations in all municipal facilities

Renewable Energy

- Continue participating in NREL's SolSmart program to streamline solar permitting
- Adopt a 100% renewable electricity goal
- Enroll in Xcel renewable programs and install solar on municipal facilities

Transportation

- Support and participate in development of a community-wide EV Readiness Plan
- Identify opportunities for EV fleet vehicles



Next Steps

Presentations

- March 12 – BOCC
- March 12 – Town of Frisco
- March 26 – Town of Breckenridge

Working Groups

- Building Codes
- Building Efficiency
- Transportation
- Renewable Energy
- Forests



HIGH COUNTRY
CONSERVATION CENTER

Thank you!

Jess Hoover

Climate Action Director

jess@highcountryconservation.org

Jen Schenk

Executive Director

jen@highcountryconservation.org



SUMMIT COMMUNITY CLIMATE ACTION PLAN: STRATEGIES FOR A SUSTAINABLE FUTURE

PREPARED BY: SUMMIT CLIMATE ACTION COLLABORATIVE

VISION STATEMENTS

WE BELIEVE THAT OUR COMMUNITIES WILL...

- be powered in ways that protect our vibrant mountain resources.
- maximize energy efficiency and lead in green design.
- design multi-modal transportation systems that discourage fossil fuel consumption.
- conserve natural resources through striving for zero waste.
- value healthy forests and understand their beneficial climate and environmental impacts.
- inspire residents and visitors to reduce emissions through outreach and leadership.

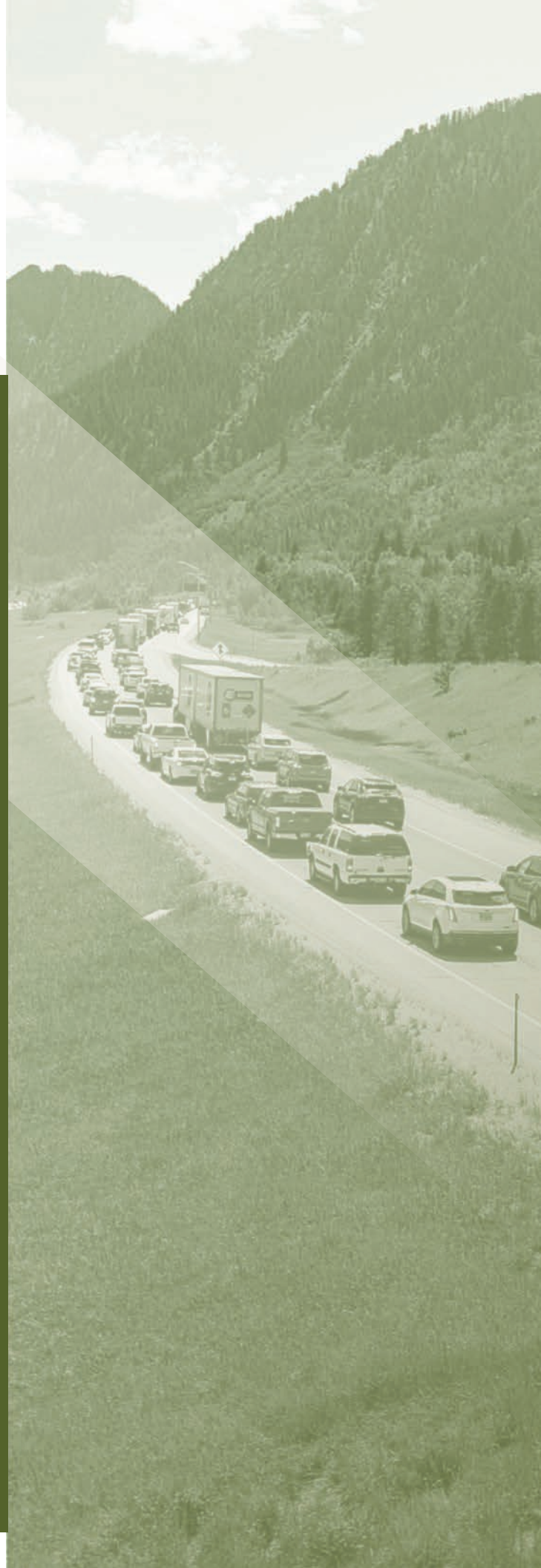


TABLE OF CONTENTS

ACKNOWLEDGMENTS	□ 1
EXECUTIVE SUMMARY	□ 4
INTRODUCTION	□ 9
GREENHOUSE GAS INVENTORY SUMMARY	□ 14
EMISSIONS REDUCTION GOALS	□ 17
RENEWABLE ENERGY	□ 19
BUILDING ENERGY	□ 23
TRANSPORTATION	□ 27
WASTE	□ 30
FORESTS	□ 32
COMMUNITY ENGAGEMENT	□ 35
MOVING FORWARD TOGETHER	□ 37

ACKNOWLEDGMENTS

The development of the Summit Community Climate Action Plan would not have been possible without the support and input of the Summit Climate Action Collaborative as well as expert group participants. Many of the organizations represented in the Collaborative also helped fund the project.



SUMMIT CLIMATE ACTION COLLABORATIVE MEMBERS

Arapahoe Basin

Mike Nathan

Breckenridge Grand Vacations

Emily Kimmel

Climate and Land Use Alliance

Donna Lee

Colorado Mountain College

Brooke Carson
Dave Askeland

Copper Mountain Resort

Jeff Grasser

High Country Conservation Center

Jen Schenk

Mountain Parks Electric

Chris Michalowski
Rob Taylor
Tom Sifers

Summit County Government

Dan Gibbs
Karn Stiegelmeier
Kate Berg
Michael Wurzel

Summit School District

Tracey Carish
Woody Bates

Town of Breckenridge

Erin Gigliello
Jeffrey Bergeron
Jessie Burley
Mark Truckey

Town of Blue River

Michelle Eddy

Town of Dillon

Jen Barchers
Ned West

Town of Frisco

Hunter Mortensen
Joyce Allgaier

Town of Silverthorne

Kelly Baldwin
Lina Lesmes

Vail Resorts

Brad Stewart
Ray Weller

Xcel Energy

Kelly Flenniken
Sharon Panas

*indicates Steering Committee Member

EXPERT GROUP PARTICIPANTS

BUILDING ENERGY

- Bruce Butler, Copper Mountain Resort
- Cody Jensen, High Country Conservation Center
- Eli Johnston, Town of Breckenridge
- Eric Westerhoff, Innovative Energy
- John McCormick, Town of Blue River
- Kasey Provorse, Energy Smart Colorado
- Matt Wright, Deeper Green Consulting
- Rick Weinman, Town of Frisco
- Stephen Oppito, Pinnacle Mountain Homes
- Tori Aidala, Norris Design

FORESTS

- Brad Piehl, JW Associates
- Brian Lorch, Summit County Government
- Cary Green, United States Forest Service
- Doozie Martin, Friends of Dillon Ranger District
- Howard Hallman, Forest Health Task Force
- Jason Lederer, Summit County Government
- Kim Schlaepfer, Walking Mountains Science Center
- Michael Wurzel, Summit County Government
- Scott Reid, Town of Breckenridge

MOBILITY AND TRANSPORTATION

- Curtis Garner, Summit Stage
- Jen Pullen, Town of Breckenridge
- Mark Johnston, Town of Breckenridge
- Michael Wurzel, Summit County Government
- Susan Lee, Town of Frisco
- Tom Gosiorowski, Summit County Government

PUBLIC ENGAGEMENT

- Adrienne Saia Isaac, National Ski Areas Association
- Austyn Dineen, Breckenridge Tourism Office
- Barry Rubenstein, High Country Conservation Center
- Brodie Boilard, Town of Frisco
- Haley Littleton, Town of Breckenridge
- Julie McCluskie, Summit School District
- Julie Sutor, Summit County Government
- Kerstin Anderson, Town of Dillon
- Kim Jardim, Town of Silverthorne
- Mikki Grebetz, Summit School District
- Russ Carlton, Vail Resorts
- Sarah Lopez, Summit County Government
- Stephanie Sweeney, Copper Mountain Resort
- Tara Galvin, The Summit Foundation
- Vanessa Agee, Town of Frisco

WASTE & RECYCLING

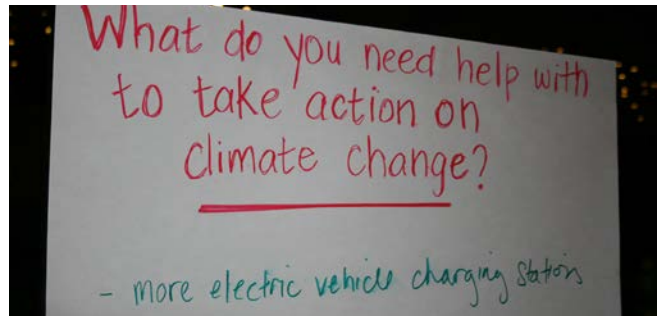
- Aaron Byrne, Summit County Government
- Rachel Zerowin, High Country Conservation Center
- Tom Gosiorowski, Summit County Government

WATER & SANITATION

- Jason Kruckeberg, Silverthorne/Dillon Joint Sewer Authority
- Jeff Goble, Town of Frisco
- Rob Martin, Copper Mountain Metro District
- Robert Buras, Town of Dillon

COMMUNITY PARTICIPANTS

On November 14th, 2018, over 60 community members attended an open house to add their thoughts, concerns and comments to the initial goals and strategies developed by the expert and Collaborative groups. This community feedback is included throughout the Climate Action Plan.



Barry Rubenstein

CONSULTANTS

Lotus Engineering and Sustainability facilitated the planning process and compiled this report, in partnership with High Country Conservation Center.

- Hillary Dobos, Principal and Co-Owner, Lotus Engineering and Sustainability
- Emily Artale, Principal Engineer and Co-Owner, Lotus Engineering and Sustainability
- Julia Ferguson, Senior Associate, Lotus Engineering and Sustainability

PROJECT MANAGER

- Jess Hoover, High Country Conservation Center



EXECUTIVE SUMMARY

SUMMIT COUNTY, LIKE ALL COMMUNITIES ACROSS THE WORLD, WILL BE IMPACTED SIGNIFICANTLY BY THE EFFECTS OF CLIMATE CHANGE.

Our way of life relies on the very environment in which we are located—the beautiful Rocky Mountains – and we recognize our responsibility to take a leading role in mitigating climate change. Average temperatures in Colorado have increased 2 degrees Fahrenheit over the past 30 years, with an additional 2 to 5 degrees’ warming expected by 2050.¹ These changes will affect the quality and length of ski seasons, and a change in visitation patterns would drastically affect our local economy and lifestyle.

Realizing our collective responsibility to mitigate greenhouse gas emissions and do our part to prevent climate change, High Country Conservation Center (HC3) convened the Summit Climate Action Collaborative in 2018. The Collaborative hired Lotus Engineering and Sustainability, LLC (Lotus) to support the development of the Summit Community Climate Action Plan and complete an initial community-wide greenhouse gas inventory for 2017. As with many communities,

emissions in Summit County are largely generated through energy use in buildings (65 percent) and transportation (33 percent). Lotus also worked with the Collaborative to help us understand strategies for reducing emissions, which were then modeled for greenhouse gas emission reduction potential.

The Collaborative group acknowledges that we do not yet have perfect solutions to reach the plan’s goals. However, we strongly believe in the ability of our community to work together to implement the strategies identified in this Climate Action Plan and make our vision of a sustainable Summit County a reality. We look forward to engaging residents, businesses, and visitors in these efforts. Moving forward, HC3 and the Collaborative members will work with each of the municipalities in Summit County to ensure this plan is adopted and supported within each jurisdiction. The Collaborative will also publish a progress report on the Climate Action Plan on an annual basis. Further, HC3 will complete an updated greenhouse gas emissions inventory every three years to determine whether we are on-track to meet our goals.

CLIMATE ACTION PLAN SECTORS



¹ Colorado Water Conservation Board. (2014). Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation. https://www.colorado.edu/climate/co2014report/Climate_Change_CO_Report_2014_FINAL.pdf

OUR COMMITMENT TO CURRENT AND FUTURE GENERATIONS

REDUCE EMISSIONS 50% BY 2030 AND 80% BY 2050

To achieve our emissions reduction goals, the Collaborative members identified impactful strategies to reduce our community's emissions. While the strategies selected are not projected to fully realize these goals, we remain committed to identifying additional strategies and technologies that can further help us reduce our emissions in the coming years.

Within the Climate Action Plan, emissions reduction strategies are grouped by the sector that they impact most directly. A brief description of the goals and key strategies within each sector are provided in the following pages.

RENEWABLE ENERGY SECTOR

VISION: Our communities will be powered in ways that protect our vibrant mountain resources.

SECTOR GOAL: Reduce emissions from electricity use 100 percent by 2035.



Our community-wide commitment to 100 percent renewable energy builds on existing initiatives from Arapahoe Basin, Summit County Government, the Town of Breckenridge, and Vail Resorts. By establishing a common goal across the county, our communities can work together to ensure we uphold our individual and mutual commitments.

KEY STRATEGIES

- Encourage all jurisdictions to adopt or support renewable energy goals and work with utilities to achieve these goals.
- Advocate at the state and local level for a rapid increase in the amount of renewable energy on the grid.
- Increase education about renewable energy and make it easier to install renewable energy on homes and businesses.



BUILDING ENERGY SECTOR

VISION: Our communities will maximize energy efficiency and lead in green design.

SECTOR GOAL: Reduce emissions from building energy use 21 percent by 2030 and 36 percent by 2050.

Through a combination of policies, education, and financial tools, we will ensure that residents, businesses and visitors benefit from more energy efficient and healthier buildings.

KEY STRATEGIES

- Adopt and enforce the most updated version of the International Energy Conservation Code for buildings and develop an above-building-code standard for new construction.
- Require energy reporting for large commercial buildings.



TRANSPORTATION SECTOR



VISION: Our communities will design multi-modal transportation systems that discourage fossil fuel consumption.

SECTOR GOAL: Reduce emissions from transportation 25 percent by 2030 and 91 percent by 2050.

To significantly reduce emissions in the transportation sector, our communities will ensure that multimodal connectivity and access are key considerations in community growth and expansion, increase the use of public transit systems, and support the adoption of electric vehicles. These actions will also have additional positive community impacts such as improved air quality through less tailpipe pollution, reduced congestion, and an improved visitor experience.

KEY STRATEGIES

- Support the adoption of more electric vehicles through expanded infrastructure and incentives.
- Provide incentives to use public transit within Summit County.



WASTE SECTOR



VISION: Our communities will conserve natural resources through striving for zero waste.

SECTOR GOAL: Reduce emissions from waste 50 percent by 2030 and 90 percent by 2050.



Summit County will expand waste reduction and recycling programs, encourage less consumption and more re-use, and make recycling and composting easy and economical for all residents and business owners. By doing this, our communities will reduce the use of natural resources and increase the landfill diversion rate.

KEY STRATEGIES

- Adopt a Save-As-You-Recycle ordinance across the county.
- Work with waste haulers to implement a curbside food scrap collection program.

FORESTS SECTOR



VISION: Our communities will value healthy forests and understand their beneficial climate and environmental impacts.

SECTOR GOAL: Maintain forest cover in Summit County and improve forest resilience to climate impacts.

In recent years, the county has seen an uptick in forest fires, and a warmer climate also increases the risk of pest infestation. Finding ways to improve the health of Summit's forests in the face of a changing climate can reduce these risks, while also preserving the trees' capacity to store carbon.

KEY STRATEGIES

- Improve the understanding of forest health in a changing climate.
- Educate and advocate for the important role of forests with regard to climate change.





INTRODUCTION

Hugh Carey

SUMMIT COUNTY IS AN AMAZING AND BEAUTIFUL PLACE. Our community is home to four internationally recognized ski resorts, year-round outdoor activities that attract millions of visitors annually, and stunning national forest. As a resort community heavily dependent on our natural resources, Summit County already has been and will continue to be significantly impacted by the onset of climate change.

Average temperatures in Colorado have increased 2 degrees Fahrenheit over the past 30 years, with an additional 2 to 5 degrees Fahrenheit warming expected by 2050.² In the fall when ski areas rely on snowmaking to cover the slopes, nighttime low temperatures are rising at a fast rate, delaying early season snowmaking and making it less efficient. At the end of the season, snow is melting 15 – 30 days earlier than in the late 1970s, cutting ski season short.³ Springtime snowpack levels have decreased at most monitoring sites since 1955, and most projections for the state’s river basins show decreasing annual runoff and less overall water supply.⁴ Even the trees are feeling the heat. Summit County’s forests have been especially affected by the mountain pine beetle – leaving our community at risk of significant fire danger and erosion.

DID YOU KNOW?

Because of increased temperatures, water flow in the Colorado River is anticipated to reduce up to 40 percent by 2100.⁶

If worldwide greenhouse gas emissions are not curtailed soon, Summit County could experience increased drought, heat, fire danger, and significantly more winter precipitation falling as rain rather than snow. In 2010, Colorado hosted 12 million skier visits (approximately 20 percent of total United States skier visits) which accounted for 37,000 employees earning \$1.2 billion in wages and contributed \$2.2 billion in value to the Colorado economy.⁵ A reduction in skiers and winter tourists due to decreased snow pack could drastically affect our local economy and lifestyle. Lastly, a growing population across the state and in Summit County will place increased pressure on water supplies and could create conflict between water-intensive industries like recreation, agriculture, and municipal use.

² Natural Resources Defense Council and Protect our Winters. (2012). Climate Impacts on the Winter Tourism Economy in the United States. http://protectourwinters.org/climate_report/report.pdf

³ Colorado Water Conservation Board. (2014). Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation. https://www.colorado.edu/climate/co2014report/Climate_Change_CO_Report_2014_FINAL.pdf

⁴ United States Environmental Protection Agency. (2016). What Climate Change Means for Colorado. <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-co.pdf>

⁵ Natural Resources Defense Council and Protect our Winters. (2012). Climate Impacts on the Winter Tourism Economy in the United States. http://protectourwinters.org/climate_report/report.pdf

⁶ Jonathan Overpeck and Brad Udall. (2017). Climate Change is Shrinking Our Rivers. <https://theconversation.com/climate-change-is-shrinking-the-colorado-river-76280>



Hugh Carey

A COMMUNITY EFFORT

This Climate Action Plan is a continuation of work undertaken in 2015 through Xcel Energy's Partners in Energy program. Through Partners in Energy, we laid the foundation for the Summit Climate Action Collaborative and created our community's first-ever greenhouse gas reduction goals. Other foundational documents include the 2009 Frisco CleanTracks Plan, the 2011 SustainableBreck Plan, and the 2011 Summit County Energy Action Plan. This Climate Action Plan builds upon that work by establishing larger goals and mapping out additional actions needed to create a more sustainable and resilient future.

EXPERT GROUPS

The planning process included input from five subject-specific expert groups. These groups included building energy, mobility and transportation, water and sanitation, forests, and public engagement. The expert groups generated and prioritized sector-based emissions reduction strategies for further consideration by the Collaborative members.

SUMMIT CLIMATE ACTION COLLABORATIVE

Over a six-month period, the members of the Summit Climate Action Collaborative were charged with further refining the strategies, setting targets and overarching greenhouse gas reduction goals, and creating vision statements for the Climate Action Plan. The Collaborative is committed to working together to achieve the plan's goals and will share responsibility for implementing the strategies outlined in the plan. High Country Conservation Center serves as the facilitator for this group.

Moving forward, each year the Collaborative will report publicly on the progress of this Climate Action Plan. In addition, HC3 will measure greenhouse gas emissions every three years to ensure that we are reducing emissions at the rate needed to achieve our goals.

VOICES FROM THE COMMUNITY

"Climate change is important to me because I've seen the climate changes firsthand in the 25 years I've lived in Summit County. It's concerning to think what the next 25 years will look like."

– Citizen Comment –

OUR GOAL IS TO REDUCE COMMUNITYWIDE EMISSIONS 50 PERCENT BY 2030 AND 80 PERCENT BY 2050.

WHY MORE ACTION IS NEEDED

Climate action is not new to Summit County. Our local citizens, municipalities, and companies have been working to decrease greenhouse gas emissions for several years, and we recognize that a stable climate is essential to ensure a vibrant, healthy, and economically viable future for Summit County.

Between 2017 and 2018 alone, communities and businesses in Summit County have made great strides in local climate action including:

- Summit County and the Town of Breckenridge committed to communitywide 100 percent renewable electricity by 2035.
- Vail Resorts, Inc. — owner of Breckenridge and Keystone Ski Resorts — announced its Commitment to Zero which includes zero net emissions by 2030, zero waste to landfill by 2030, and zero net operating impact on forests and habitat by 2030.
- Arapahoe Basin announced its goals to achieve carbon neutrality, a 75 percent waste diversion rate, and 100 percent renewable electricity all by 2025.
- Summit County voters passed a property tax to increase funding for waste reduction programs.
- The towns of Breckenridge and Frisco and Summit County Government joined the Compact of Colorado Communities, a consortium of local governments committed to addressing the impacts of climate change.

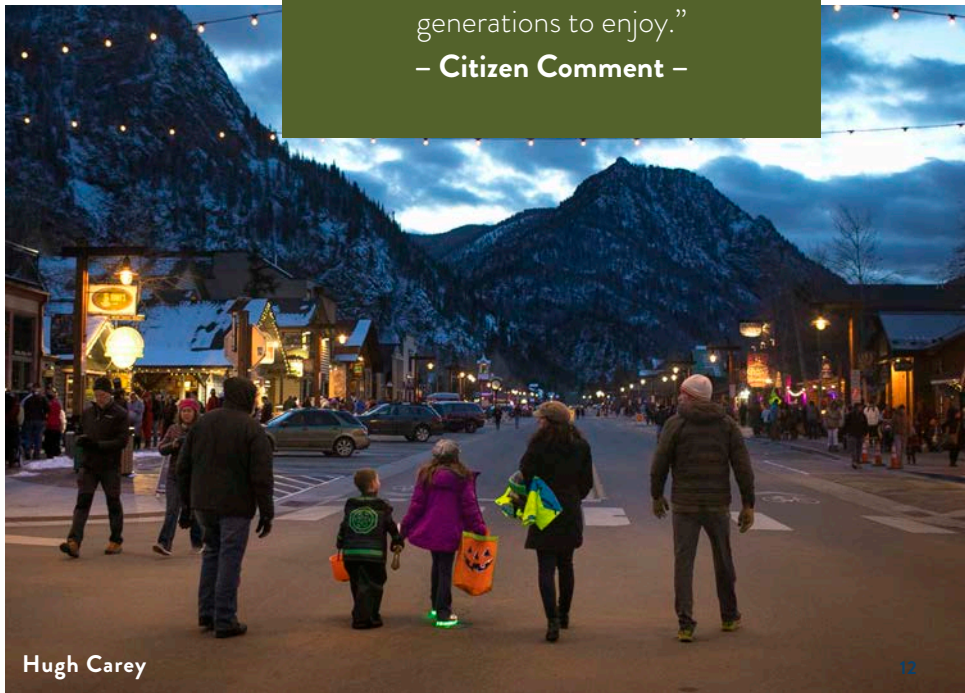
VOICES FROM THE COMMUNITY

“I care about leaving a healthy planet behind for future generations to enjoy.”

– **Citizen Comment** –



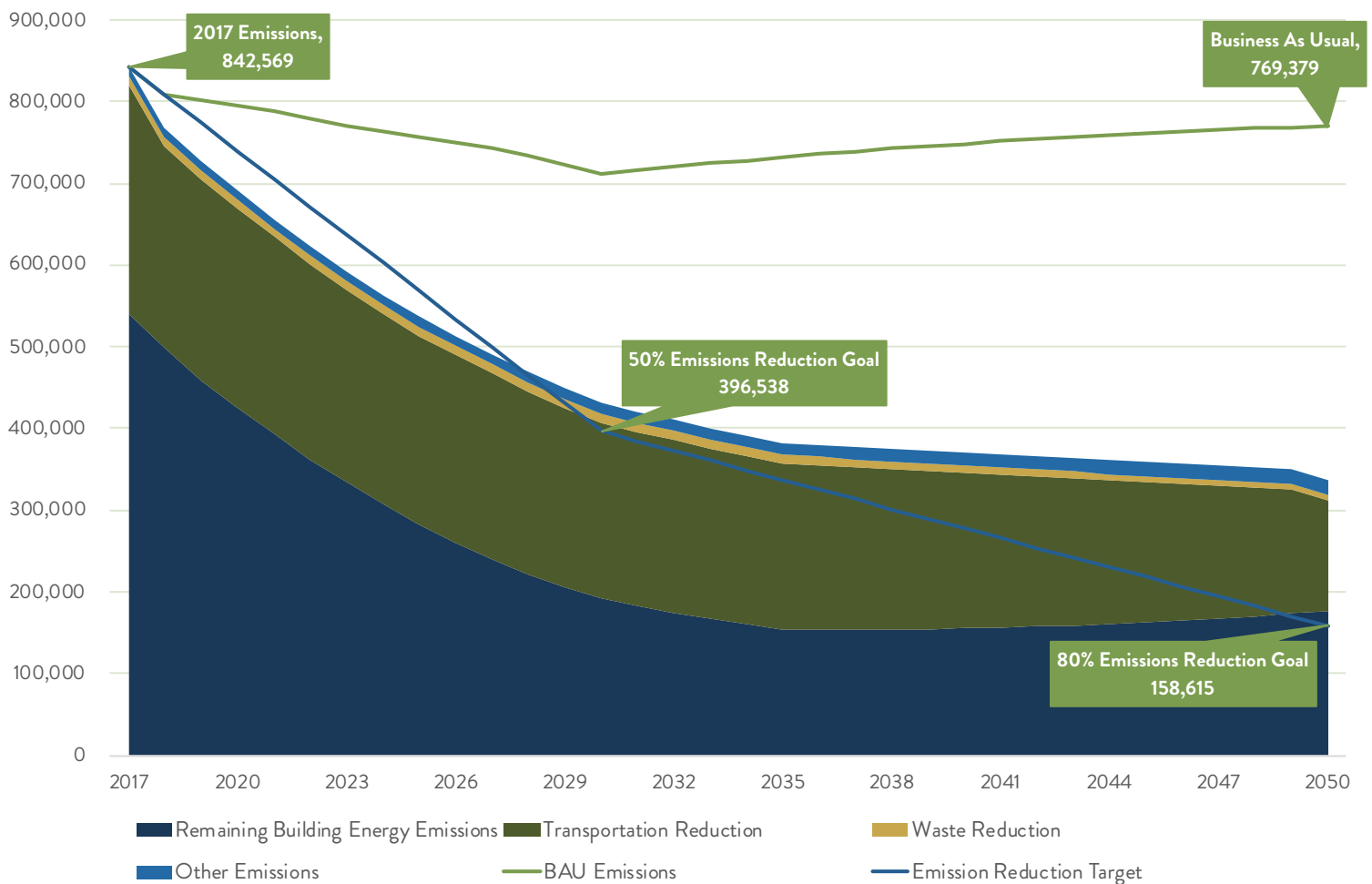
Innovative Energy



Hugh Carey

Yet without further action, the community’s greenhouse gas emissions will decrease only 3 percent by 2050. This decrease is due to Xcel Energy’s greenhouse gas reduction targets, which are included in the Business As Usual scenario shown in Figure 1. Building upon its commitment to providing 55 percent renewable energy by 2026, Xcel plans to reduce carbon emissions 80 percent by 2030 and to deliver zero-carbon electricity by 2050. In addition, the business-as-usual scenario includes the recently announced low-emission vehicle standards signed by Governor Hickenlooper in 2018.⁷ Despite Xcel Energy’s announcement and future low-emission vehicle standards, Summit County’s emissions are anticipated to stay relatively flat due to expected increases in population, development, and visitation.

FIGURE 1: GHG REDUCTIONS FROM STAKEHOLDER STRATEGIES (MTCO₂e)



⁷David Migoya. (2018). Colorado Will Adopt California-Style Low-Emission Vehicle Standards Under Hickenlooper Order. The Denver Post. <https://www.denverpost.com/2018/06/19/colorado-california-emission-vehicle-standards/>



GREENHOUSE GAS INVENTORY SUMMARY

GREENHOUSE GAS INVENTORY SUMMARY

In 2018, the Summit County community completed its first greenhouse gas inventory to better understand our emissions profile and to give insight to policies and programs that could help reduce emissions in our region.

The data indicate that our communities have unique challenges in terms of greenhouse gas emissions. For example, Summit County is among the most visited ski destinations in the world. Peak seasonal daily population is nearly 150,000 people – a stark increase over the year-round resident population of approximately 30,000.⁸ With millions of tourists visiting our community each year, it's likely that tourism has a larger impact on emissions than our year-round resident population.

DID YOU KNOW?

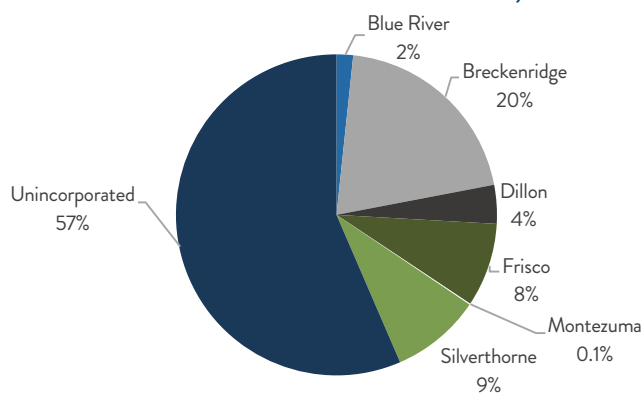
Flying from New York to Los Angeles (5,000-miles round-trip) produces more than two metrics tons of carbon dioxide. Based on U.S. averages, you generate the same amount of emissions after driving your car for five months.

The following are a few key takeaways from the inventory:

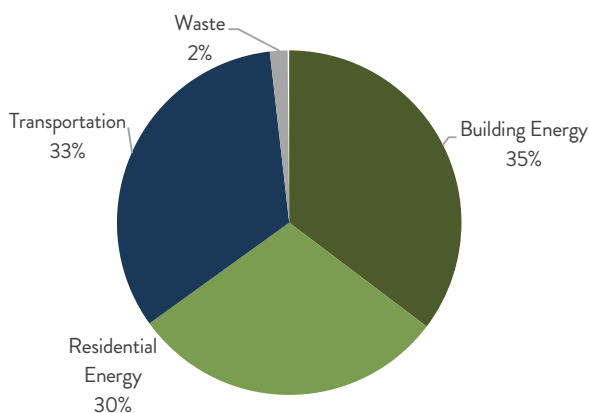
- 842,569 metric tons of carbon dioxide equivalent (MtCO₂e) were produced in 2017. This is equal to the emissions from 179,000 cars driven for a year.
- As shown in Figure 2, more than half of emissions are generated in unincorporated areas of Summit County, followed by the larger towns of Breckenridge, Silverthorne, and Frisco. The high level of emissions in unincorporated Summit County is driven by two main factors: These areas are where more than half of the county's full-time residents live and where most ski areas' energy use occurs.
- The majority of Summit County's emissions arise from three sectors: commercial energy, residential energy, and transportation (see Figure 3).
- As shown in Figure 4, the single largest source of emissions is electricity, followed by natural gas and mobile gasoline. In 2017, approximately 28 percent of electricity came from renewable resources.

⁸Summit County Government. (2013). Summit County Multi-Hazard Mitigation Plan.

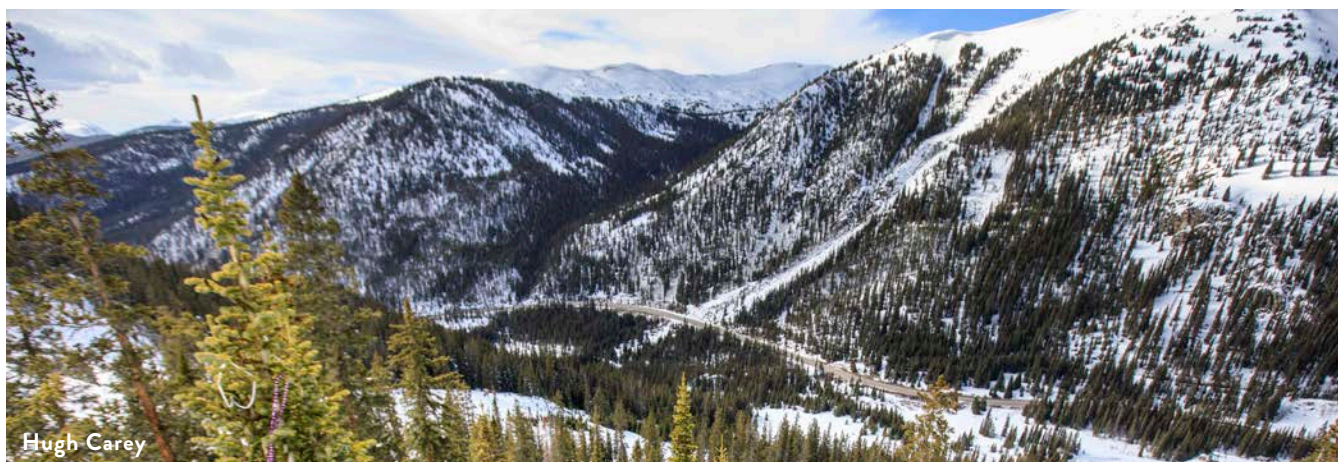
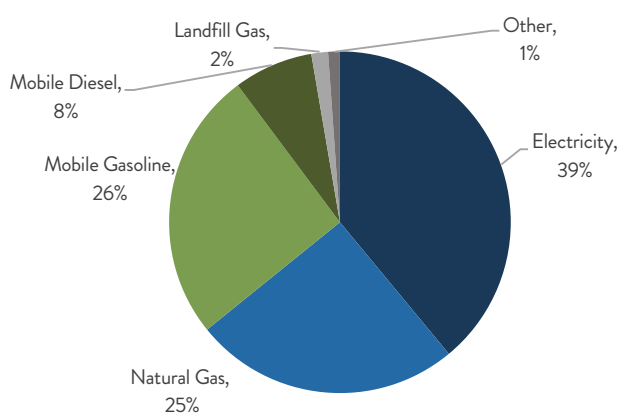
**FIGURE 2:
EMISSIONS BY MUNICIPALITY, 2017**



**FIGURE 3:
EMISSIONS BY SECTOR, 2017**



**FIGURE 4:
EMISSIONS BY SOURCE, 2017**



FORESTS

In addition to emissions from energy, transportation, and waste, Summit County’s forests play a role in the overall carbon budget of the county. On the plus side, preliminary estimates for the years 2001-2011 suggest the county’s forests sequester (that is, capture and store) around 10 percent of emissions from other sectors. However, there are emissions when development such as buildings, roads, or recreational areas result in a permanent loss of forest area. Emissions also occur from disturbances such as insects and fire, which may be temporary if the forest is restored. Forest greenhouse gas estimates will be updated in 2019 when new data becomes available.



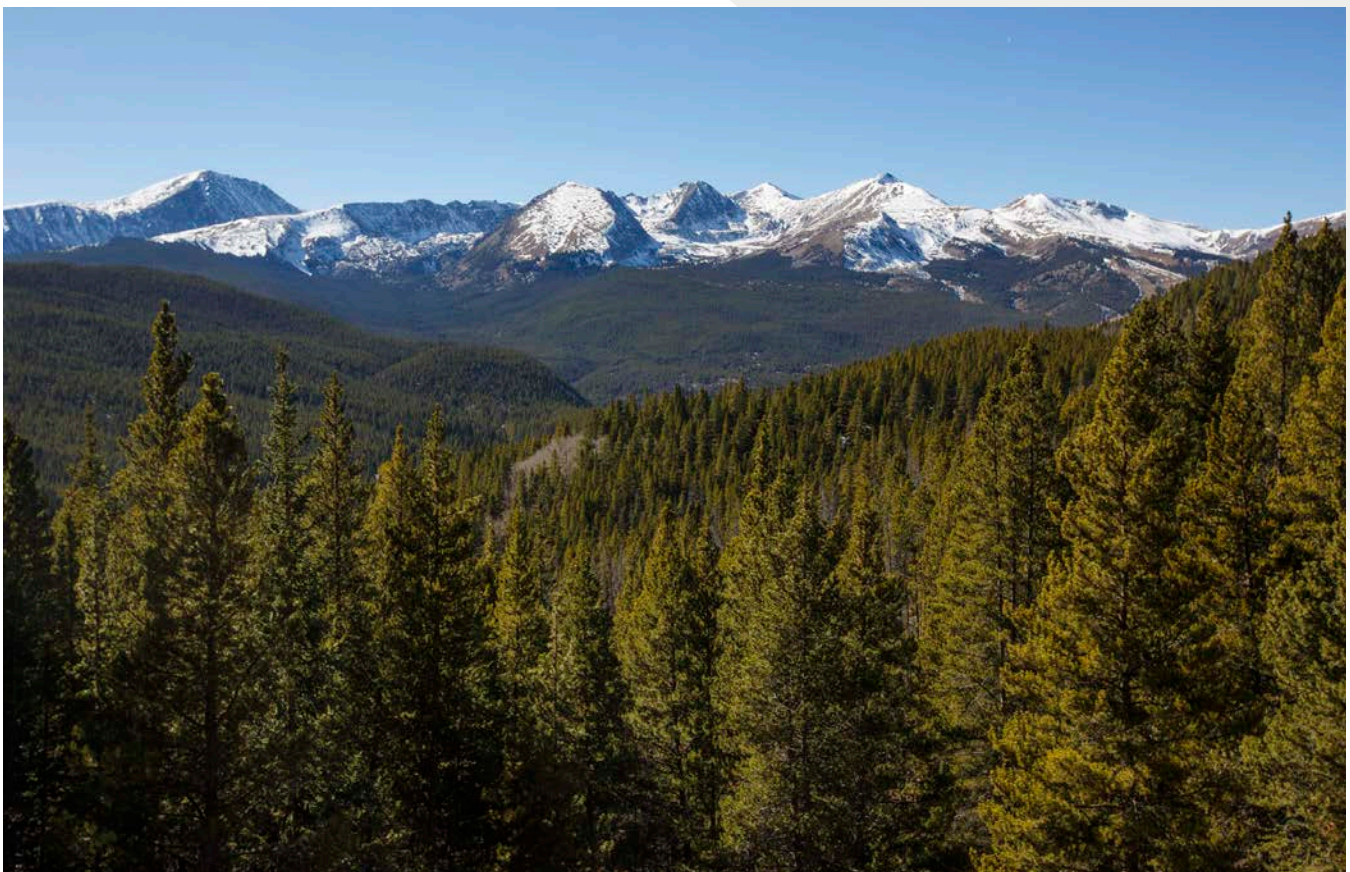
OUR EMISSIONS REDUCTION GOALS

Our goal is to reduce greenhouse gas emissions 50% by 2030 and 80% by 2050 over a 2005 baseline.

Many of the Collaborative members hope that we can achieve these goals sooner than the target years we have chosen. While the strategies outlined in this plan include actions necessary to meet our community goals, the Collaborative also recognizes that changes and innovations in technology and the economy over the coming years may make new strategies applicable to our community. We remain open, engaged, and informed of additional opportunities to drive greater emissions reductions.

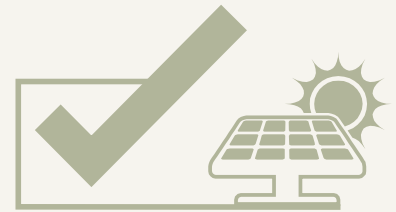
The strategies that follow are divided into the sectors they impact: 1) Renewable Energy, 2) Building Energy, 3) Transportation, 4) Waste, 5) Forests, and 6) Community Engagement. Throughout each section, strategies are listed in order of potential impact on emissions reductions, with the first strategy listed having the highest potential impact. Additionally, we have a set of strategies for Community Engagement, which, while not necessarily driving emissions reductions directly, will ensure greater success of our Climate Action Plan through engaging and empowering our whole community to participate. The Collaborative will begin implementing several of the plan's strategies in 2019, while others have a longer-term timeline.

Together, if all the strategies are implemented, the Summit County community could reduce emissions 60 percent by 2050 based on a 2005 baseline. In order to achieve our goal of reducing emissions 80 percent by 2050, will need to find cost-effective ways to decrease our dependence on natural gas heating.



Hugh Carey

RENEWABLE ENERGY



VISION: Our communities will be powered in ways that protect our vibrant mountain resources.

SECTOR GOAL: Reduce emissions from electricity 100 percent by 2035.

DID YOU KNOW?

Enough solar energy hits Colorado to power approximately 360 times the state's current electricity needs.⁹

WHERE WE ARE NOW

Currently, over 99 percent of the electricity used in Summit County is provided by Xcel Energy (Xcel). The remainder of homes and businesses are served by Mountain Parks Electric. In 2017, Xcel's energy mix consisted of 28 percent renewable resources. In the coming years, Xcel plans to rapidly increase the amount of renewable electricity on its grid, primarily from large-scale wind farms in the eastern plains of Colorado, as well as large solar installations. The company has committed to generating 55 percent renewable electricity by 2026 and zero-carbon electricity by 2050 (see Figure 6 and Figure 7).

FIGURE 6: 2017 XCEL ENERGY MIX

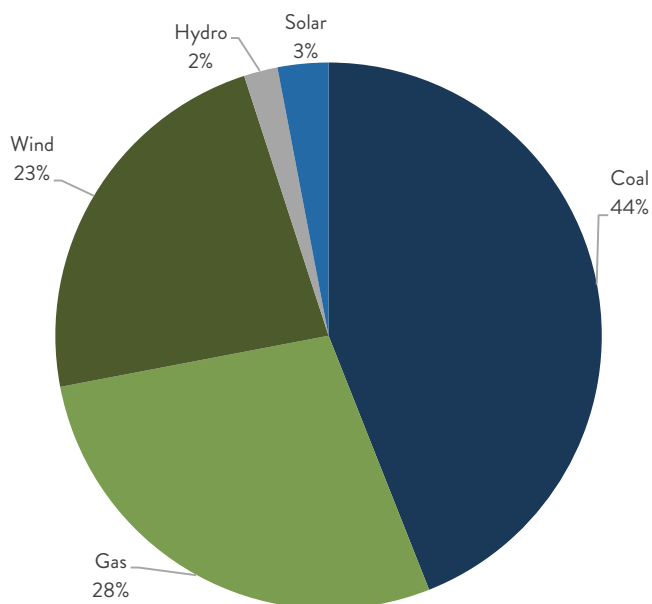
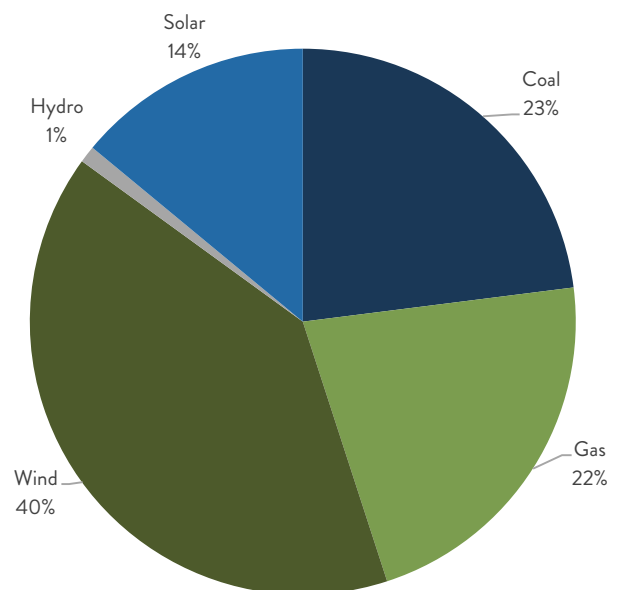


FIGURE 7: 2026 XCEL PROJECTED ENERGY MIX

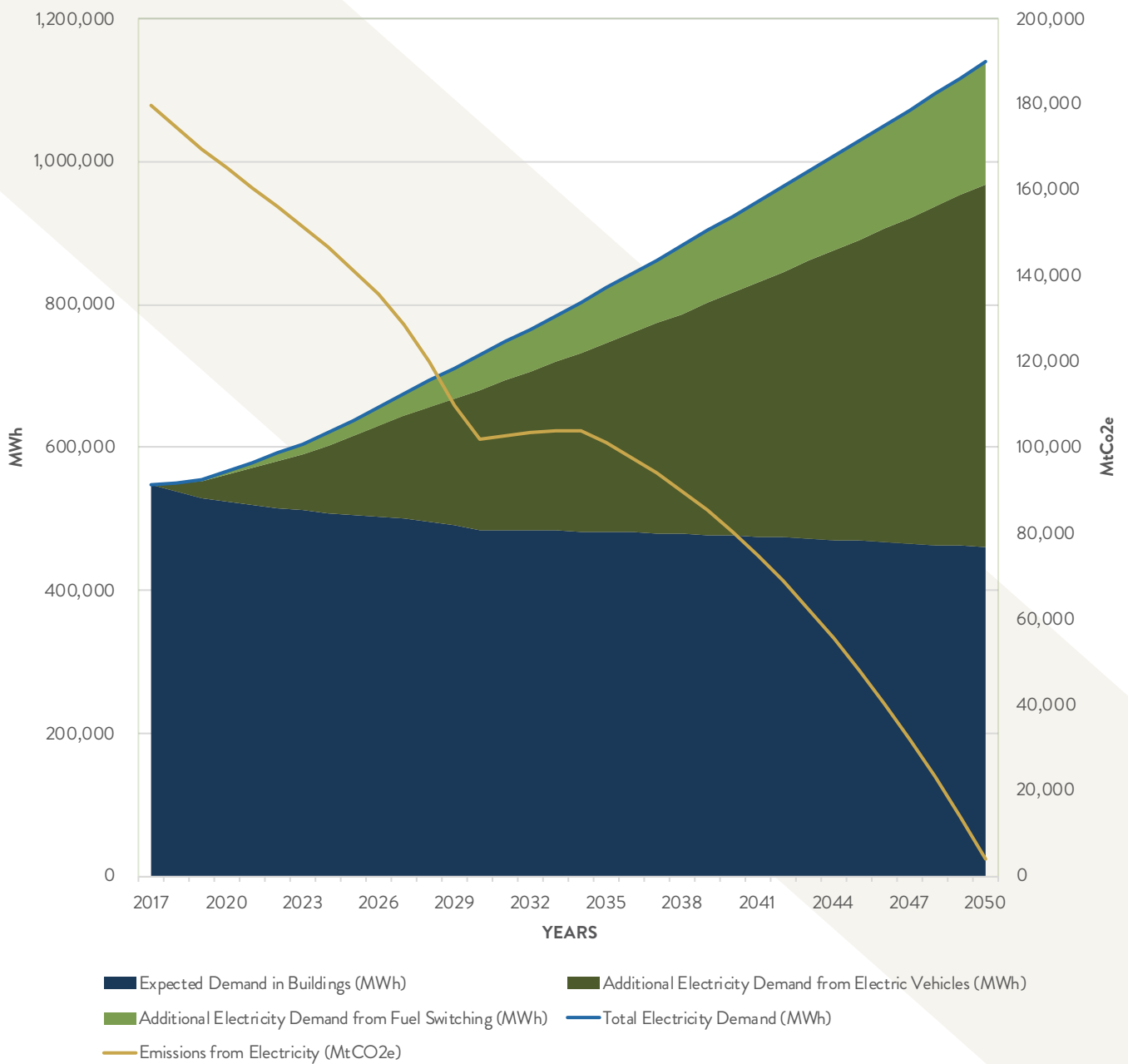


⁹Solar Energy Industries Association. Top Ten Solar States. <https://www.seia.org/research-resources/top-10-solar-states>

As shown in Figure 8, the demand for electricity in our communities is expected to rise. This projected increase is due to several factors, including:

- population growth, leading to more homes and businesses needing power;
- increased use of electric vehicles;
- increased snowmaking by the ski areas;
- increased demand for air conditioning during the summer months; and
- increased electric heating.

FIGURE 8: PROJECTED ELECTRICITY DEMAND



WHERE WE ARE HEADED

This community-wide commitment builds on existing initiatives within the county. Arapahoe Basin set a goal to be carbon neutral by 2025. Vail Resorts committed to 100 percent renewable electricity by 2020 and plans to be carbon neutral by 2030. The Town of Breckenridge committed to 100 percent renewable electricity for municipal operations by 2025 and 100 percent renewable electricity for the entire community by 2035. Summit County Government also set a goal of 100 percent renewable electricity by 2035. By establishing a common goal across the county, our community can work together to ensure we uphold our individual and mutual commitments. While renewable electricity goals are important to our community, they do not address emissions from natural gas use. To meet our goal, we need to decrease our reliance on natural gas as a heating fuel.

UNIQUELY SUMMIT COUNTY

- Summit County receives an average of 245 days of sunshine a year.
- In 2017, locally produced solar and wind systems within Summit County's borders accounted for less than one percent of community electricity use.

RENEWABLE ENERGY STRATEGIES

- Encourage all jurisdictions to adopt or support renewable energy goals.
- Advocate at the state level for a rapid increase in the amount of renewable energy on the grid.
- Develop a local renewable energy roadmap and/or feasibility study to ensure that we maximize the use of our local solar and wind resources.
- Execute a community campaign to increase solar installations through education and bulk purchase programs.
- Streamline the permitting process for renewable energy systems.
- Collaborate with utilities to achieve the goals of this plan.

VOICES FROM THE COMMUNITY

- “Government and public entities should lead by example.”
- “Promote WindSource and solar programs from Xcel to HOAs and out-of-state property owners.”



BUILDING ENERGY



VISION: Our communities will maximize energy efficiency and lead in green design.

SECTOR GOAL: Reduce emissions from building energy use 21 percent by 2030 and 36 percent by 2050.

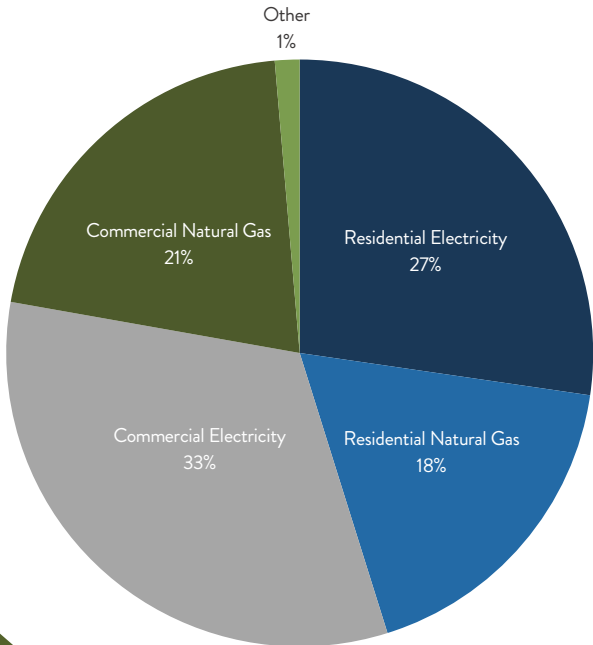
DID YOU KNOW?
In 2016, electricity use accounted for 28 percent of the United States' total emissions.¹⁰

WHERE WE ARE NOW

In 2017, buildings and ski area energy use in Summit County accounted for two-thirds of the community's emissions. Commercial buildings have slightly higher total emissions than residential buildings. The majority of building energy emissions comes from the use of electricity in buildings to power lights and other building systems. This is followed by the use of natural gas, primarily for heating. A small share of emissions result from diesel and propane used in generators and heaters (see Figure 9).

The Renewable Energy section of this report discussed the significant greenhouse gas impact of a clean and renewable-powered electricity grid. However, to achieve our goals, our community must decrease the use of natural gas, propane, and stationary diesel.

FIGURE 9: BUILDING ENERGY EMISSIONS



As a resort community, we experience massive population fluctuations throughout the year, and over two-thirds of homes are second homes. In addition, Summit County has dozens of hotels and energy-intensive tourism and recreation facilities. Together, this creates a unique set of challenges that requires a creative approach to reducing building energy emissions.

¹⁰ United States Environmental Protection Agency. Sources of Greenhouse Gas Emissions. <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

WHERE WE ARE HEADED

Through a combination of policies, education, and financial tools, we will ensure that homeowners, businesses, and visitors to our community are able to take advantage of the benefits of more energy efficient and healthier buildings. We have identified a set of strategies that will ensure we continue to reduce energy consumption in existing buildings and incorporate the most innovative green building standards into new developments.

While the strategies listed here cover a wide range of actions and will reduce community emissions significantly, we recognize that technological improvements in the coming years and a rapid transition to a renewable electricity grid may offer further opportunities to reduce building energy emissions.

UNIQUELY SUMMIT COUNTY

- Over one-third of homes in Summit County are heated with electricity. As we transition to 100 percent renewable electricity, these buildings will essentially become carbon-free.
- 68 percent of homes in Summit County are second homes.
- Summit residents that participate in the Energy Smart Colorado program realize an average utility bill savings of \$430/year.



Jess Hoover

BUILDING ENERGY STRATEGIES

The building energy sector strategies are organized by residential building strategies, commercial building strategies, and strategies that impact all buildings.

RESIDENTIAL BUILDING STRATEGIES

- **Explore the feasibility of requiring all new residential construction to be heated with electricity as there are no carbon-free alternatives to natural gas or propane.**
- **Develop a homeowner association, short-term rental, and second-homeowner energy efficiency program.**
We will develop a program that incentivizes, educates, and supports these property owners to improve their buildings' energy efficiency and install renewable energy.
- **Improve and expand existing residential energy efficiency programs to target more homes and gain greater energy savings.** Residents in our community can currently participate in Energy Smart Colorado and the Colorado Affordable Residential Energy programs to reduce energy use.
 - **Strategy Target:** Increase the number of homes that have participated in the Energy Smart Colorado program to 30 percent of all homes by 2025 and 55 percent of all homes by 2030.
 - **Strategy Target:** Increase the number of eligible households that have participated in the Colorado Affordable Residential Energy program to 20 percent of eligible households by 2025 and 25 percent of eligible households by 2030.
- **Host LED light bulb giveaways or exchanges for homeowners.**

COMMERCIAL BUILDING STRATEGIES

- **Amend local codes to require mandatory building retro-commissioning.** Retro-commissioning means that commercial property owners will assess their buildings' mechanical systems to ensure efficient operation.
- **Improve and expand existing commercial energy efficiency programs to target more businesses and gain greater energy savings.**
 - **Strategy Target:** Increase the number of commercial properties that have participated in ResourceWise and similar programs to 30 percent of all buildings by 2025 and 55 percent of all buildings by 2030.

- **Adopt local ordinances to require energy reporting for large commercial buildings.**

Owners of large commercial and industrial buildings will publicly report their energy use on an annual basis. Reporting programs can empower them to make smarter decisions about how their buildings and facilities run.

- **Strategy Target:** Achieve 80 percent compliance with mandatory reporting for all buildings over 15,000 square feet by 2025.
- **Strategy Target:** Achieve 100 percent compliance with mandatory reporting for all buildings over 10,000 square feet by 2030.

- **Promote energy efficiency and renewable energy for school and government buildings.** Our communities will lead by example by promoting and prioritizing energy efficiency and green building in new construction and major renovations of school and government facilities.

VOICES FROM THE COMMUNITY

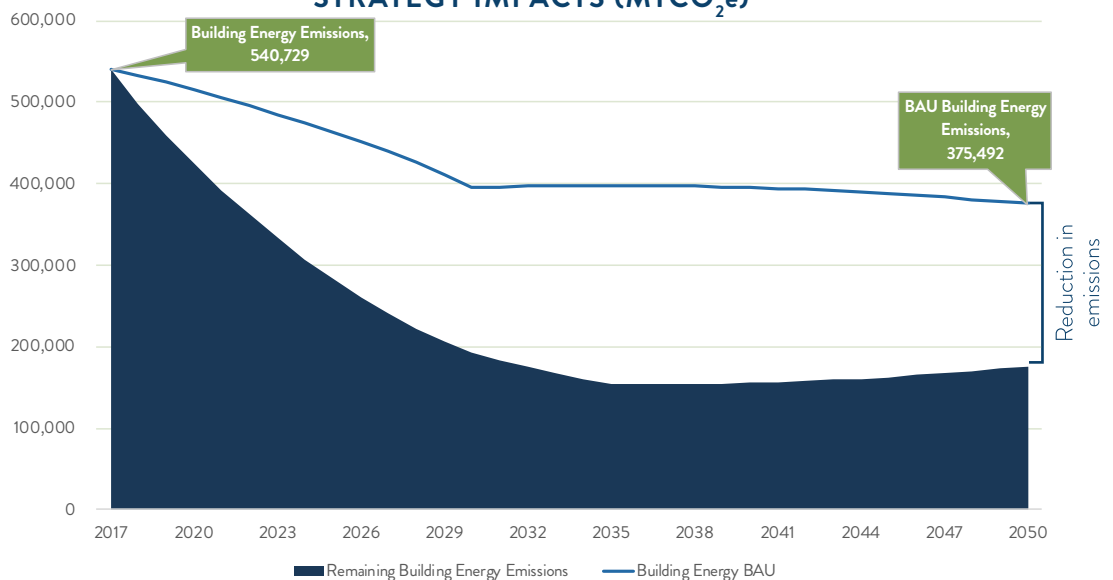
- “Commit to renewable resources and support HC3’s home and business energy audits.”
- “New building codes to mandate solar and energy efficient homes and commercial buildings.”

STRATEGIES IMPACTING ALL BUILDINGS

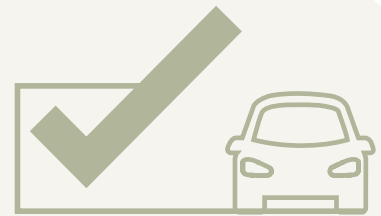
- **Develop an above-building-code standard for new construction.**
- **Adopt and enforce the most updated version of the International Energy Conservation Code for buildings.** The Summit County community will continue to adopt new international codes every six years.
- **Develop a long-term financing mechanism to provide incentives for reducing energy use and greenhouse gas emissions in buildings.**

As shown in Figure 10, by pursuing the above strategies our community will reduce building sector emissions by 21 percent by 2030 and 36 percent by 2050.

FIGURE 10: BUILDING ENERGY BUSINESS AS USUAL VS. STRATEGY IMPACTS (MTCO₂e)



TRANSPORTATION



VISION: Our communities will design multi-modal transportation systems that discourage fossil fuel consumption.

SECTOR GOAL: Reduce emissions from transportation 25 percent by 2030 and 91 percent by 2050.

DID YOU KNOW?

Even though the current electric grid isn't 100 percent carbon free, electric cars produce less than half of the lifetime emissions as conventional gasoline-powered vehicles.¹¹

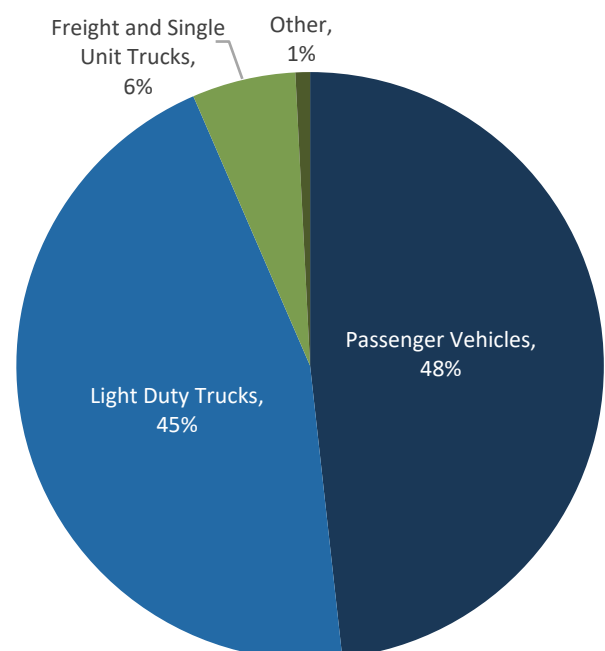
WHERE WE ARE NOW

Emissions from transportation activities account for one-third of our total community emissions. Over 90 percent of transportation emissions come from driving gas and diesel-powered cars and trucks.

WHERE WE ARE HEADED

To significantly reduce emissions in the transportation sector, our communities will ensure that multimodal connectivity and access are key considerations for community growth and expansion, increase the use of public transit systems, and support the deployment and adoption of electric vehicles. These actions will also have additional positive community impacts such as improved air quality, reduced congestion and an improved visitor experience.

FIGURE 11: VEHICLE MILES TRAVELED BY VEHICLE TYPE



¹¹ Steve Hanley. (2018). Electric Car Myth Buster - Well-to-Wheel Emissions. <https://cleantechnica.com/2018/02/19/electric-car-well-to-wheel-emissions-myth/>



UNIQUELY SUMMIT COUNTY

- There were 49 electrical vehicles registered in Summit County in 2017. According to the Colorado Electric Vehicle Plan, this could increase to 7,000 by 2030 under a high-adoption scenario.

Hugh Carey

TRANSPORTATION STRATEGIES

- **Support the adoption of more electric vehicles through the development of a community-wide Electric Vehicle Readiness Plan, as well as expanded infrastructure and incentives.**
 - **Strategy Target:** Increase the share of electric vehicles driving on Summit County roads to 30 percent of all vehicles by 2030 and 60 percent of all vehicles by 2050.
- **Switch government fleets to electric vehicles within the replacement cycle and when appropriate models are available.** Local governments will train fleet technicians to ensure most maintenance can be performed in-house.
- **Promote clean fuels and alternative fueling infrastructure for heavy-duty vehicles.** We will work with partner agencies to promote and encourage the development of clean fueling stations for heavy-duty vehicles.
 - **Strategy Target:** Increase the percentage of heavy-duty vehicles using alternative fuels to 30 percent by 2030 and 50 percent by 2050.
- **Discourage single occupancy vehicles through through incentives, policies, and participation in regional initiatives.**
- **Provide incentives to use public transit within Summit County.** Summit County has an expansive and free public transit system available to both residents and visitors. We will work to ensure that transit is easy to access and has routes and time schedules that are convenient for our community and visitors.
 - **Strategy Target:** Increase the ridership of public transit systems in Summit County 50 percent by 2030 and 100 percent 2050 (over a 2017 baseline).
- **Develop a Summit County bicycle and walking master plan.**
- **Partner with utilities to ensure grid capacity for increased electric vehicle charging.**

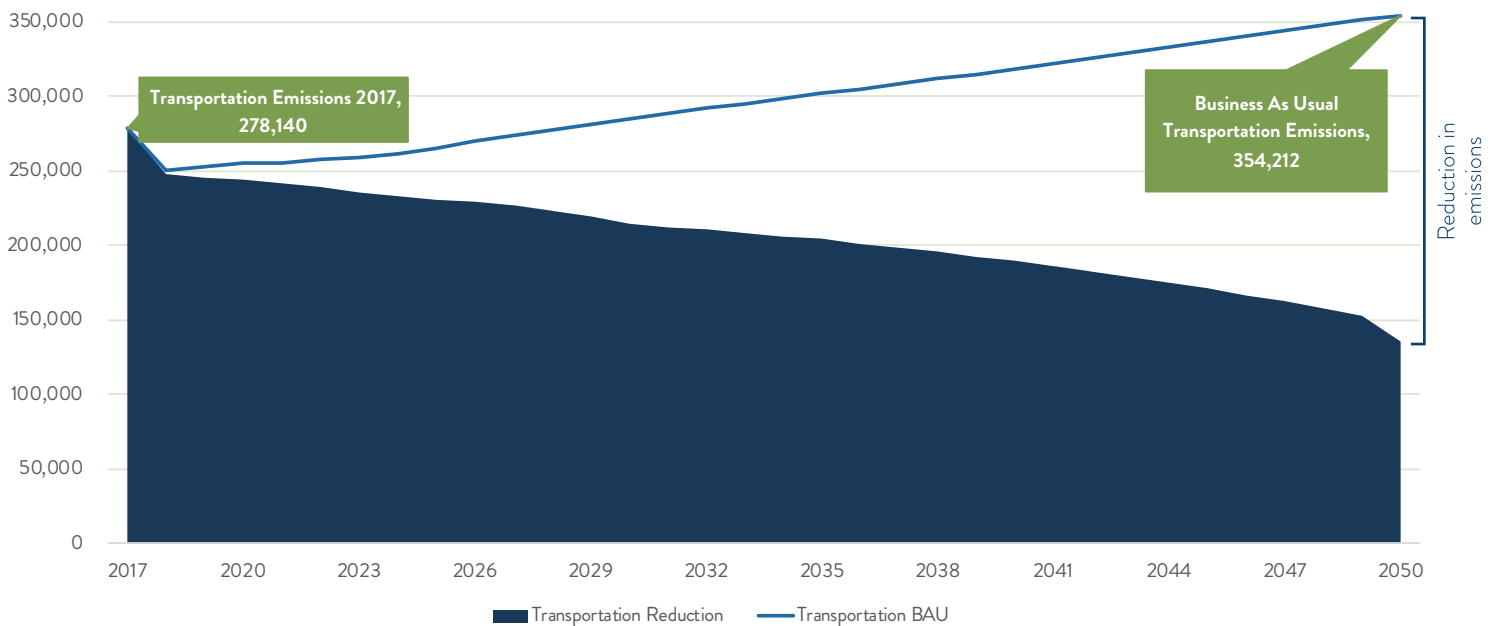
VOICES FROM THE COMMUNITY

- “Frequent, reliable, and affordable connection from Front Range to Summit County.”
- “Promote walking, biking, taking the bus, and carpooling.”



As shown in Figure 12, the combined impact of the above strategies is likely to result in a 25 percent reduction in total community emissions by 2030, and a 91 percent reduction by 2050. Additionally, we will continue to explore further opportunities to reduce emissions from the transportation sector through improved technology and innovative projects.

FIGURE 12: TRANSPORTATION: BUSINESS AS USUAL VS. STRATEGY IMPACTS (MTCO₂e)





WASTE

VISION: Our communities will conserve natural resources through striving for zero waste.

SECTOR GOAL: Reduce emissions from waste 50 percent by 2030 and 90 percent by 2050.

DID YOU KNOW?

Nationally, Americans compost or recycle 34 percent of our waste. In Summit County, we recycle or compost only 21 percent of our waste.¹²

WHERE WE ARE NOW

The Summit County Resource Allocation Park (also known as SCRAP) hosts a landfill, recycling processing center, and commercial composting operation. In 2017, Summit County residents and visitors landfilled over 50,000 tons, recycled 5,000 tons, and composted 8,700 tons for a total landfill diversion rate of 21 percent. Waste accounts for only two percent of the community's emissions.

WHERE WE ARE HEADED

With the passing of Ballot Measure 1A in 2018, the SCRAP will increase local opportunities for recycling and composting. By encouraging less consumption and more re-use, and making recycling and composting easy and economical for all residents and business owners, our community will reduce emissions and our use of natural resources.

UNIQUELY SUMMIT COUNTY

- The SCRAP accepts electronic waste and household hazardous waste free of charge for residents.
- When waste decomposes at higher altitudes, it produces less methane than at sea level.

¹² United States Environmental Protection Agency. (2016). Municipal Solid Waste. <https://archive.epa.gov/epawaste/nonhaz/municipal/web/html/>

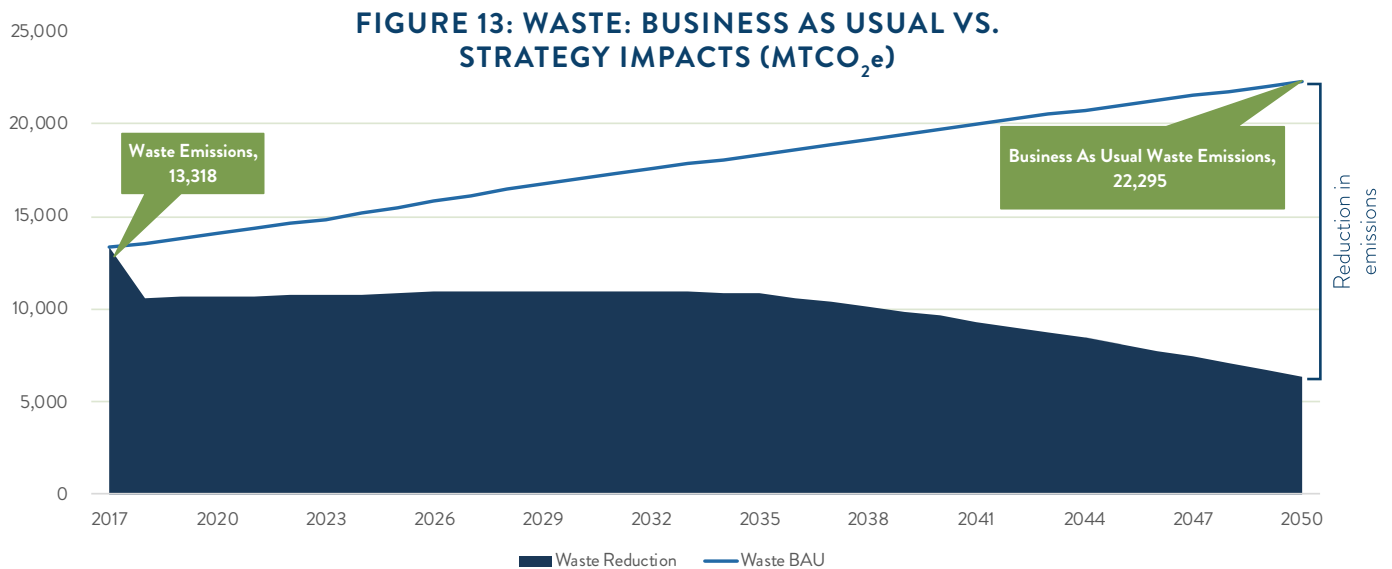
WASTE STRATEGIES

- **Adopt a Save-As-You-Recycle ordinance across the county.** Save-As-You-Recycle will provide financial incentives for people to reduce their landfilled waste by recycling and composting more.
- **Consider implementing landfill bans on easily recycled items.** For example, in Fort Collins cardboard must be recycled or reused. It is not allowed in the landfill.
- **Work with waste haulers to implement a curbside food scrap collection program.**
- **Increase the number of glass collection sites and types of materials accepted at recycling centers.**
- **Require new construction to include space for recycling and food scrap collection.**
- **Create codes to require recycling at new construction sites.** Many construction materials can be recycled, reused, or repurposed. We will require all new construction to prioritize recycling and reuse over landfilling the waste that is created on-site.
- **Incentivize deconstruction and reuse instead of demolition in construction and demolition projects.**
- **Create local markets and infrastructure for used asphalt and concrete.**
- **Encourage local governments to demonstrate leadership by providing zero waste stations in all facilities as well as creating and enforcing zero waste event requirements.**

VOICES FROM THE COMMUNITY

- “Create a curbside food scrap collection program.”

As shown in Figure 16, the combined impact of the above strategies is likely to result in a 42 percent reduction in total waste emissions by 2030, and a 90 percent reduction by 2050. Additionally, we will continue to explore new opportunities for recycling and composting to further reduce emissions from the waste sector.



FORESTS



VISION: Our communities will value healthy forests and understand their beneficial climate and environmental impacts.

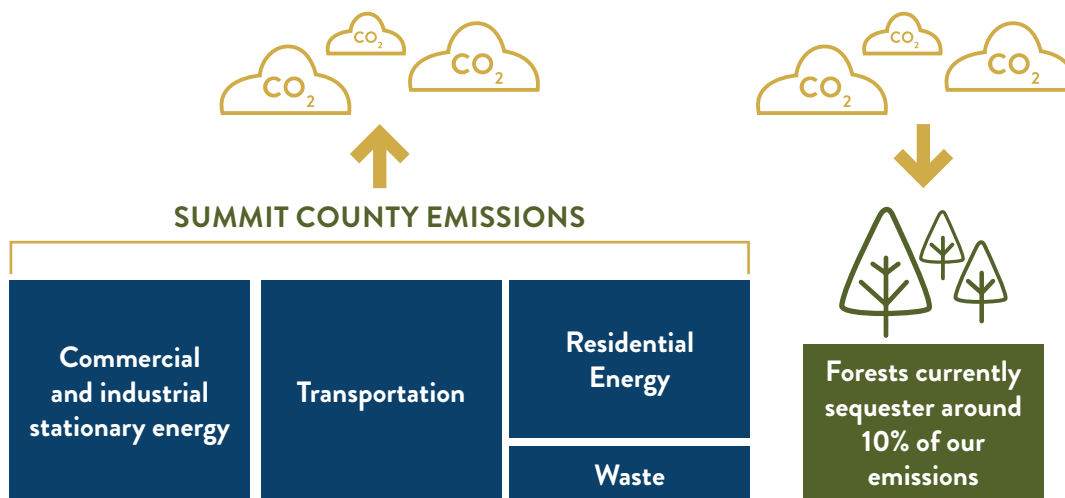
SECTOR GOAL: Maintain forest cover in Summit County and improve forest resilience to climate impacts.

WHERE WE ARE NOW

Currently, 53 percent of Summit County is forested, sequestering approximately 10 percent of the county’s gross emissions. Much of this forest land (roughly 170,000 acres) is managed by the US Forest Service (USFS). Around 15 percent of Summit County forests are outside of federal lands and managed by Summit County Government or local towns or private land owners.

Between 2001 and 2011, our community lost nearly 8,300 acres of live trees. Most of this loss was due to the mountain pine beetle. Federal forest land that is subject to natural disturbance (such as pest or fire) will likely regenerate over time, and the USFS may replant areas to accelerate forest restoration. The USFS also monitors federal forest land after treatment—for example, clear cuts that occur in beetle infected areas to manage fuel load and create defensible space—and ensures forests in such areas are restored in ways that promote safety and forest health.

Over the same time period, there was a loss of over 1,880 acres of non-federal forest. Around 90 percent of this loss was likely due to beetle disturbance, while 10 percent was due to increased development. When forests are cut, this results in the release of greenhouse gas emissions (as the carbon they stored goes to the atmosphere), as well as lost future sequestration—as forests can sequester carbon for long periods of time.



WHERE WE ARE HEADED

There are two major trends impacting the forests of Summit County: development and climate change. Through a combination of efforts, the community will strive to maintain its forest and tree canopy cover despite expected growth in population over the coming years. This will require consideration of how to ensure forest areas lost to disturbance are restored, while managing the expected development and expanding urban-rural boundaries in coming years.

In addition, Summit County forests will be increasingly impacted by climate change. In recent years the county has seen an uptick in forest fires, and a warmer climate also increases the risk of pest infestation. Finding ways to improve the health of Summit's forests in the face of a changing climate can reduce these risks to our forests.

DID YOU KNOW?

A tree can sequester up to 400 pounds of carbon dioxide over 25 years. At that rate, it takes 80 trees 25 years to absorb the same amount of carbon emissions an average American produces in one year.

UNIQUELY SUMMIT COUNTY

- Summit County citizens appreciate and love forests! The beauty and recreation that the White River National Forest provides is a key reason why people live in Summit County.
- Trees in Summit County grow slowly—due to our altitude, precipitation, and colder average temperatures—so the carbon we lose when cutting down trees is not quickly regained. Most of Summit County's forests have been storing carbon for over a century.
- Summit County and the Town of Breckenridge have active, well-funded Open Space and Trails departments, managing and protecting nearly 20,000 acres of land across the county.
- Summit County is one of the first communities in the country to include forests in their GHG inventory and Climate Action Plan, recognizing the important role forests play in regulating our climate.

¹³ Bob Schildgen. (2016). How much carbon do trees really store? <https://www.sierraclub.org/sierra/2016-2-march-april/ask-mr-green/how-much-carbon-do-trees-really-store>

FOREST STRATEGIES

- **Develop and implement a community-wide forest management plan.**

Many communities have a forest or tree management plan—not only to create a healthier environment, but also a friendlier, more beautiful setting. Increasingly, tree management is seen as a critical piece of building sustainable communities. A community-wide management plan could:

- Encourage municipalities to set goals for maintaining forest and tree canopy.
- Expand the use of county’s Transferable Development Rights (TDR) program in the Lower Blue, Snake, and Tenmile river basins by encouraging the towns of Dillon, Frisco, and Silverthorne to use TDRs as a tool for protecting forested lands from development.
- Develop ways to incentivize tree planting on private property.
- Increase the number of street trees and reevaluate trees and landscaping in parks.
- Continue to monitor forest cover on non-federal lands and develop an urban tree inventory.

- **Improve the understanding of forest health in a changing climate.**

Summit County forests are already experiencing the impacts of climate change. More work is needed to understand what measures will best promote healthy forests for generations to come. A local collaborative, the Forest Health Task Force, is dedicated to promoting forest health in Summit County. Actions undertaken may include:

- Develop a Forest Health Index to monitor factors that affect the health of Summit County’s forests and to take action when needed to preserve the many services forests provide to our community.
- Conduct research on Summit County’s forest ecology in a changing climate and better understand how to promote carbon sequestration and health of future forests.

- **Educate and advocate for the important role of forests with regard to climate change.**

While most people who live and visit Summit County appreciate forests for the recreation and beauty they provide, fewer are aware of the role forests play in mitigating climate change. Therefore, Summit County will work to:

- Educate the community and visitors about the benefits of healthy forests, including the carbon sequestration they provide.
- Advocate for forest protection at the federal, state, and local levels.

By taking the steps above, Summit County can expand the ways in which our community values forests. These actions not only “lock up” the carbon stored within our forests, but also ensure that trees continue to sequester carbon well into the future—helping Summit County reach its climate change mitigation goals.

VOICES FROM THE COMMUNITY

- “Incorporate climate change and our forests’ health into messaging.”
- “Plant new diverse varieties of trees that adapt to our changing climate.”



COMMUNITY ENGAGEMENT

COMMUNITY ENGAGEMENT

VISION: Our communities will inspire residents and visitors to reduce emissions through outreach and leadership.

We believe in a bright, healthy, and sustainable future for Summit County; however, we cannot do it without our community's help. We recognize that this Climate Action Plan will only be impactful if we engage and empower the entire community, including visitors, to be a part of this effort. If successful, the results will be far-reaching, and our community will be:

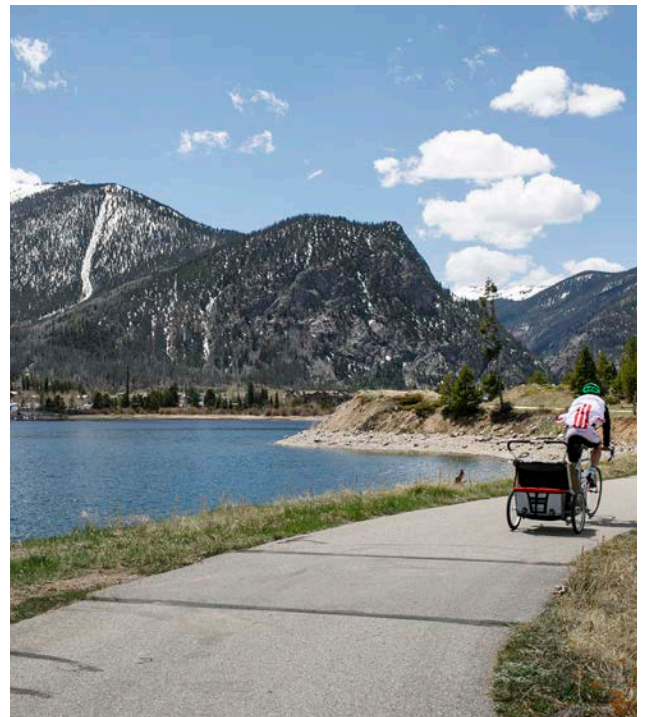
- healthier due to less air pollution and congestion, with greater opportunities for safe multimodal travel;
- more informed and engaged about climate, sustainability, and energy issues;
- more affordable due to more energy efficient housing and businesses; and
- empowered to create a vibrant and sustainable Summit County for current and future generations.

COMMUNITY ENGAGEMENT STRATEGIES

- **Collaborate with ski areas and local towns to promote the Climate Action Plan and implement strategies to educate millions of visitors.** We hope that visitors will be inspired to take these strategies and lessons learned back to their own communities to further expand the benefits of climate action.
- **Create an outreach campaign to engage locals in climate action.** Working collaboratively, we will develop an engaging, empowering, and relevant outreach campaign that helps locals understand and participate in these efforts.
- **Provide free workshops to help residents learn how to reduce their carbon footprints.**
- **Develop programs to engage K-12 and college students on climate change and solutions.** We will work with the Summit School District, Colorado Mountain College, and other relevant organizations to develop programs that educate and engage students of all ages.
- **Utilize special events to share messages, provide resources, and engage participants in carbon reduction strategies.** We will be an active participant in community and events that occur throughout Summit County in order to engage people, provide resources, and ensure that implementation of our Climate Action Plan is a community effort.



MOVING FORWARD TOGETHER



Hugh Carey

MOVING FORWARD TOGETHER

As a resort community that hosts millions of visitors each year, the Summit Climate Action Collaborative believes it is our responsibility to demonstrate leadership in the fight against climate change. This plan identifies strategies and actions that will lead to significant emissions reductions, ensuring that we do our part to mitigate the most severe effects of climate change. Our Collaborative strongly believes in the ability of our communities to work together to implement the strategies identified in this Climate Action Plan and make our vision of a sustainable Summit County a reality. We look forward to engaging residents, businesses, and visitors in these efforts so that we can create a healthy and sustainable future for all.

Moving forward, HC3 will work with each of the municipalities in Summit County to ensure this plan is adopted and supported within each jurisdiction. Many of the Collaborative members that helped create this plan have agreed to participate in working groups to develop and implement the policies, programs, and initiatives identified in the plan. Each year, the Collaborative will publish a progress report on the Climate Action Plan. Further, HC3 will complete an updated greenhouse gas emissions inventory every three years to determine whether we are on-track to meet our goals.

In Summit County, our way of life is directly tied to the health of our environment. While we recognize the significant effort required to fully implement this Climate Action Plan, we are committed to protecting our mountain community for generations to come.



HIGH COUNTRY
CONSERVATION CENTER





Summit Community Climate Action Plan

Town of Frisco
March 12, 2019



Why a Climate Action Plan?

- Colorado is one of the fastest-warming states in the country
- If we do nothing...
 - Denver will be the new Albuquerque
 - Only 43% of wintertime precipitation will fall as snow in the Upper Colorado watershed



Climate Action Plan

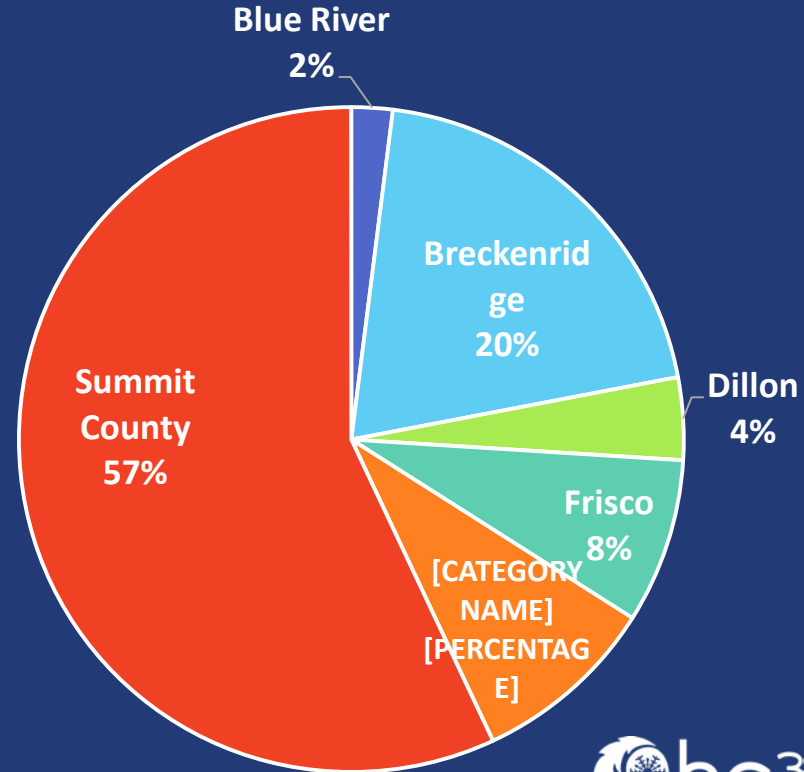
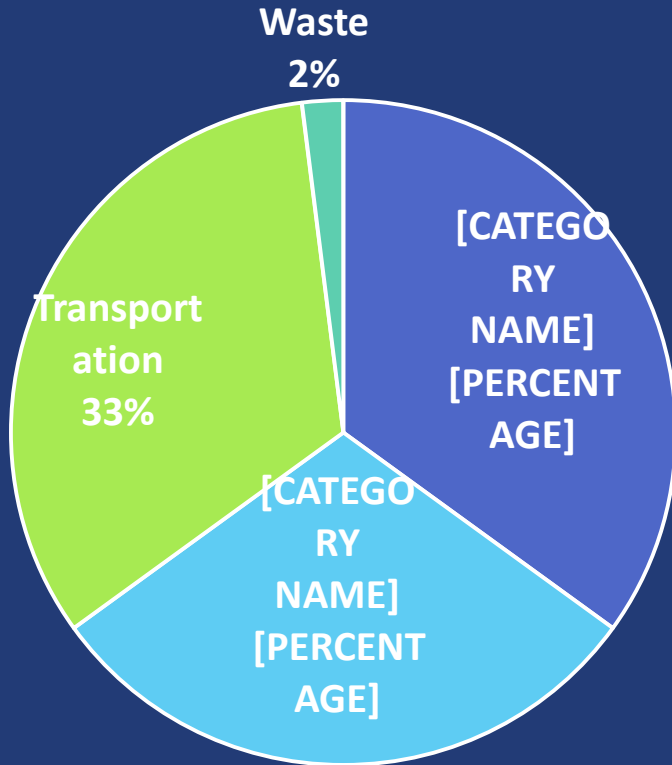
- GHG Inventory Results
- Goals and Strategies
 - Renewable energy
 - Building energy
 - Transportation
 - Waste
 - Forests
 - Community Engagement

A photograph of solar panels in a field with mountains in the background. The solar panels are mounted on a metal frame and are tilted towards the sun. The background shows a landscape with mountains, trees, and a fence. A rainbow is visible in the sky near the solar panels.

SUMMIT COUNTY
COMMUNITY CLIMATE ACTION PLAN:
STRATEGIES FOR A SUSTAINABLE FUTURE

Summit County GHG Emissions

GHG Emissions by Town



Climate Action Goals

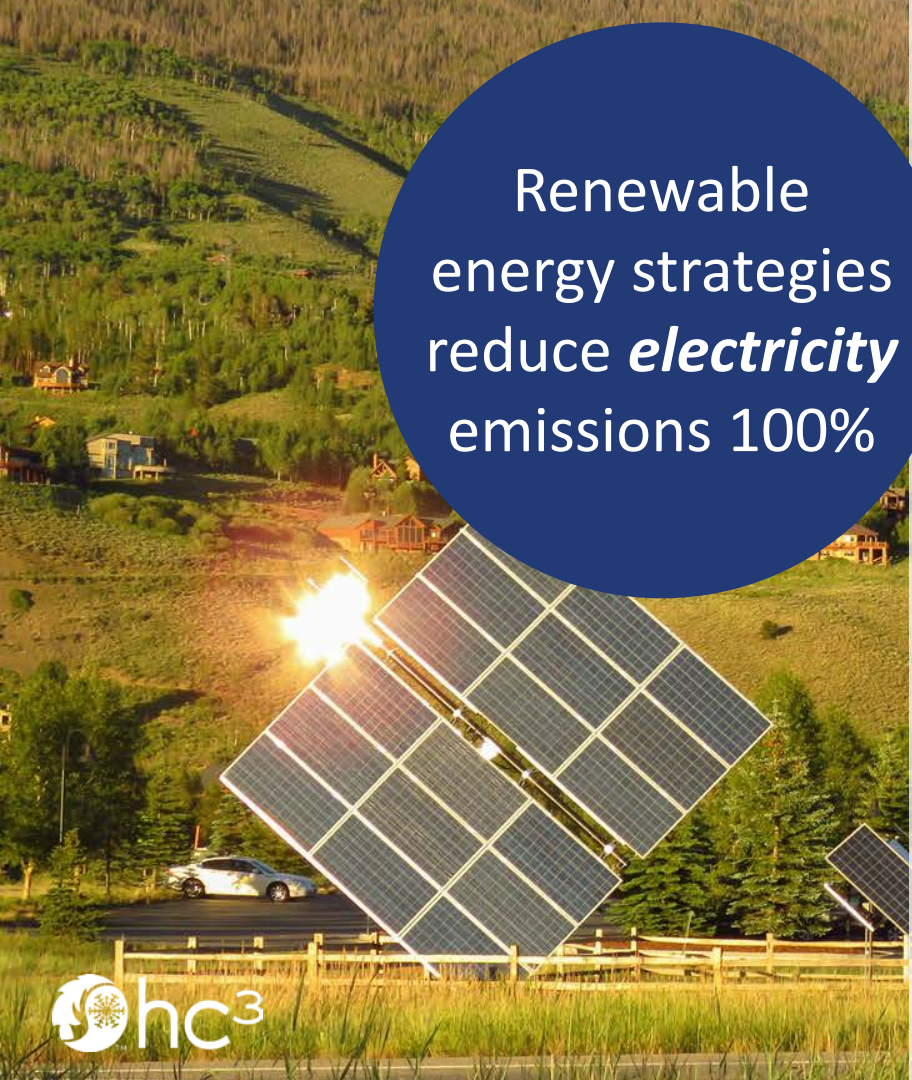
Reduce
countywide
emissions...

50% by 2030
80% by 2050





CAP Strategies & Impacts

A scenic view of a mountain town with solar panels in the foreground and a blue circle containing text. The background shows a lush green hillside with houses and a road. In the foreground, several solar panels are mounted on a wooden fence. A bright sun is visible behind the panels, creating a lens flare effect. A white car is parked on the road in the distance.

Renewable
energy strategies
reduce *electricity*
emissions 100%

Renewable Energy

- Encourage town councils to support renewable energy goals
- Work with Xcel Energy to develop a local renewable energy roadmap
- Execute a bulk-buy program for roof-top solar
- Streamline solar permitting process

Building Efficiency

- Adopt 2018 IECC code set
- Develop an above-building-code standard for new construction
- Require energy reporting for large businesses
- Explore opportunities for beneficial electrification

Building efficiency strategies reduce *building* emissions 36%

Transportation

- Create and implement regional EV readiness plan
- Help facilitate fleet conversions to EVs
- Engage in regional discussions about transportation alternatives on I-70
- Identify opportunities for increasing use of local transit systems

Transportation strategies reduce *transportation* emissions 91%

Waste

- Develop Silverthorne recycling center
- Launch free food scrap recycling program
- Mattress and carton recycling
- Install glass depots at more locations around the county

Waste strategies
reduce *waste*
emissions 90%

Forests

Forests store
10% of Summit
County's
emissions

- Develop a community-wide forest management plan
- Improve understanding of forest health in a changing climate
- Educate the community about the benefits of healthy forests

Community Engagement

- Create an outreach campaign to engage locals and visitors
- Provide free workshops to help locals reduce carbon footprints
- Leverage partnerships with local governments, ski areas, school district and CMC





Be Like Doc PJ

Keep Summit Cool for climate change.



Keep Summit Cool

- Campaign urges people to “Be like...” local Summit County residents
- KeepSummitCool.org
 - Climate Action Updates
 - Opportunities for personal engagement
- 2019 Events
 - Climate Change: Simple, Serious, Solvable – April 3, CMC Breckenridge
 - EV Ride & Drive – April 24, CMC Breckenridge

This is Doc PJ. These are old-school straight skis. This is an old-school bike. Be like PJ and ride your bike to reduce carbon emissions and take action for the climate. Learn how you can be like PJ and take action. Visit: KeepSummitCool.org

A project of the Summit Climate Collaborative.

#BeLocal #KeepSummitCool



Top Climate Action Strategies for Town of Frisco

Building Energy

- Adopt 2018 International Energy Conservation Code
- Support and participate in efforts to update the Summit Sustainable Building Code, including requiring all new construction be solar and EV ready
- Begin tracking municipal energy use and identify buildings for energy efficiency improvements

Waste

- Install zero waste stations in all municipal facilities

Renewable Energy

- Continue participating in NREL's SolSmart program to streamline solar permitting
- Adopt a 100% renewable electricity goal
- Enroll in Xcel renewable programs and install solar on municipal facilities

Transportation

- Support and participate in development of a community-wide EV Readiness Plan
- Identify opportunities for EV fleet vehicles



Next Steps for Frisco

1. Plan Adoption

- March 5 – Town of Dillon
- March 12 – BOCC
- March 19 – Town of Blue River
- March 26 – Town of Breckenridge

2. Making the Climate Action Plan actionable for the Town of Frisco

- Comprehensive Plan
- Employee Work Plans



HIGH COUNTRY
CONSERVATION CENTER

Thank you!

Jess Hoover

Climate Action Director

jess@highcountryconservation.org

Jen Schenk

Executive Director

jen@highcountryconservation.org



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: VANESSA AGEE, MARKETING AND COMMUNICATIONS DIRECTOR
RE: JULY 4TH FIREWORKS
DATE: MARCH 12, 2019

Summary: During the January 22, 2019 Frisco Town Council work session discussion about Frisco's July 4th fireworks display, Council directed town staff to return to Council with a strategic plan to manage traffic, crowd and safety issues during July 4th fireworks. This discussion was precipitated by the likelihood that Frisco could be the only fireworks display in Summit County on July 4th, due to Breckenridge announcing that they are cancelling July 4th fireworks going forward.

Background: Frisco's July 4th celebrations have traditionally included a fireworks display at 9:30 pm over Dillon Reservoir. Through the years and especially more recently, there have been consistent concerns regarding whether conditions are safe for fireworks, and Frisco's fireworks display has been cancelled three times since 2000- in 2002, 2012 and 2018.

Breckenridge Town Council confirmed in January 2019 that they were making the decision to cancel July 4th fireworks going forward due to the "fragile" state of the forest and concerns about public safety. There are no plans to replace fireworks with a "surrogate" event because there is a sense that no replacement would be adequate in lieu of fireworks.

For all municipalities and fire districts in the area, the decision to cancel fireworks has not just been about the risk of fire caused by a legal public display, but also about discouraging "copycat" illegal fireworks, which may be inspired by a legal display. Vail still plans to have fireworks, and Avon is currently working on making a decision about whether to continue with a July 4th fireworks display. Since the January 22nd work session, staff has had discussions regarding Frisco's July 4th fireworks with Summit Fire & EMS, Summit Stage staff, Town of Dillon staff, Town of Breckenridge staff and leadership from other towns and Summit County. Valuable feedback and support were been provided and offered, and there was a consistent indication from leadership in other towns and Summit County, that they are understanding and supportive of a potential change in tradition if Frisco decides the cancel July 4th fireworks.

Staff Analysis: Strategic plans to manage traffic, crowds and public safety would need to be focused on clear and realistic communications to the public, increased public safety staffing/staging and offsite parking with the potential to watch in place or walk to a viewing area, rather than relying on public transportation.

1. Chief Wickman indicated during the January 22 Town Council work session that there would be a need for at least 10 additional police officers, which would be contracted through other jurisdictions. The Town of Breckenridge has offered to provide "a couple" of officers.

2. Town of Frisco marketing staff would put together a viewing guide, which would include information about parking, pedestrian routes, viewing areas (including a rating system for the level of crowds/automobile egress challenges at each area) and expectations around traffic, including estimated egress times from Frisco post-fireworks. This guide would be less a marketing piece and more a traffic, crowd and expectation management tool. The Town of Dillon has offered \$2,000 in funding to assist with this guide.
3. Staff proposes that the July 4th event utilize parking lots at the Medical Office Building/County Commons, Summit High School and Summit Middle School, in addition to in-town parking. The Town would ask that these lots be provided free of charge in support of this regional event. There would be no transportation offered from these areas, as spectators would be guided to watch in place or walk to a viewing area (even from the High School). The Marina parking lot would only be available to boat slip/mooring renters and disabled spectators, as it has been in past years.
4. Any marketing efforts would involve distributing schedules and the viewing guide and encouraging spectators to spend the night in Frisco. There would be no effort to draw more spectators for July 4th.
5. Staff would request that the Colorado Department of Transportation temporarily make Highway 9 two lanes in each direction through the "Gap".
6. Summit Fire & EMS would stage emergency response staff and vehicles in coordination with the Frisco Police Department, the Summit County Sheriff's Office and Summit County Government.

Recommendation: Staff recommends that Town Council discuss the following two strategies, in consideration of Council's direction during the January 22nd work session and in light of the traffic gridlock experienced during the weekend of January 26th, when Breckenridge hosted the International Snow Sculpture Championships and Frisco hosted Spontaneous Combustion.

1. Continue to plan for 4th of July fireworks in 2019, while implementing plans for increases in traffic and crowds by securing more police support and additional offsite parking and planning for and marketing alternative viewing sites to support a positive experience for locals and visitors
2. Cancel 4th of July fireworks into the future and move music to earlier in the evening (currently 7:15 – 9:15 pm), while shifting some of the fireworks budget to increase the music budget; leaving time and space for locals and visitors to go to local restaurants and stores after the festivities and/or to plan their own evening celebrations.

Financial Impact:

Public Safety Budget:

- Ten additional police officers would cost approximately \$4,000 for five hours.
- Four additional security guards would be approximately \$640 for five hours. Currently, four security guards are budgeted.
- Staff would suggest adding some additional lighting towers to the Marina parking lot and high traffic pedestrian areas. For four additional light towers, it would be \$3,960.

Parking Lot Attendant Budget: In order to maximize parking at each lot, staff would recommend having at least four parking lot attendants at each of the three offsite parking locations for four hours, resulting in an expense of approximately \$1,200.

Fireworks and Music Budget: July 4th Fireworks are budgeted at \$35,000 each year. If fireworks were to be cancelled, then this would be a savings of \$35,000. Staff would propose spending \$10,000 of this savings to secure better musical talent for the evening July 4th concert.

Advertising Budget: In 2018, the Town spent \$2,990 on advertising July 4th. This included Krystal radio ads and a concurrent broadcast during fireworks, six ads in the Summit Daily and one ad in a Front Range publication.

- Staff would propose cutting the \$925 used on the Front Range publication, no matter whether fireworks were cancelled or not.
- Staff would recommend that the Krystal Radio budget of \$608 be used to support communications around fireworks viewing.
- Staff would recommend that an abbreviated viewing guide be placed in the Summit Daily for two days and that a full layout would be part of the glossy July 4th wrap on July 4th. This would be at a cost of \$3,980.

The total cost to disseminate 2019 July 4th spectator messaging would be \$4,588.

Viewing Guide Budget: The viewing guide would require the assistance of a contractual graphic designer with an estimated cost of \$2,100. Again, the Town of Dillon has offered to provide \$2,000 to assist with this effort.

Staffing Budget: Typical July 4th Town of Frisco staffing expenses are not accounted for in this analysis.

Budget Impact:

- Minimum Estimated Cost for Additional Traffic, Crowd and Public Safety Strategies: \$15,000\
- Cost of Fireworks: \$35,000
- Total: \$50,000

Reviews and Approvals: This report has been reviewed and approved by:

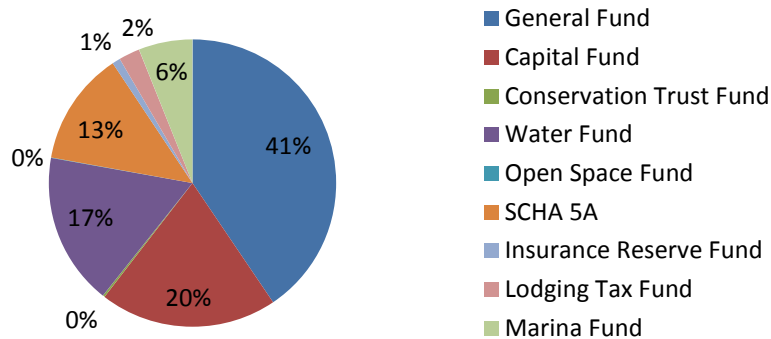
Bonnie Moinet, Finance Director
Nancy Kerry, Town Manager

**FINANCE REPORT - CASH POSITION
JANUARY 2019**

LEDGER BALANCES:

General Fund	\$9,188,738.65
Capital Fund	\$4,522,610.25
Conservation Trust Fund	\$51,007.63
Water Fund	\$3,876,208.30
Open Space Fund	\$12,138.59
SCHA 5A	\$2,900,739.78
Insurance Reserve Fund	\$205,639.21
Lodging Tax Fund	\$539,163.93
Marina Fund	\$1,375,277.58
TOTAL	\$22,671,523.92

Cash Percentage of Total Ledger

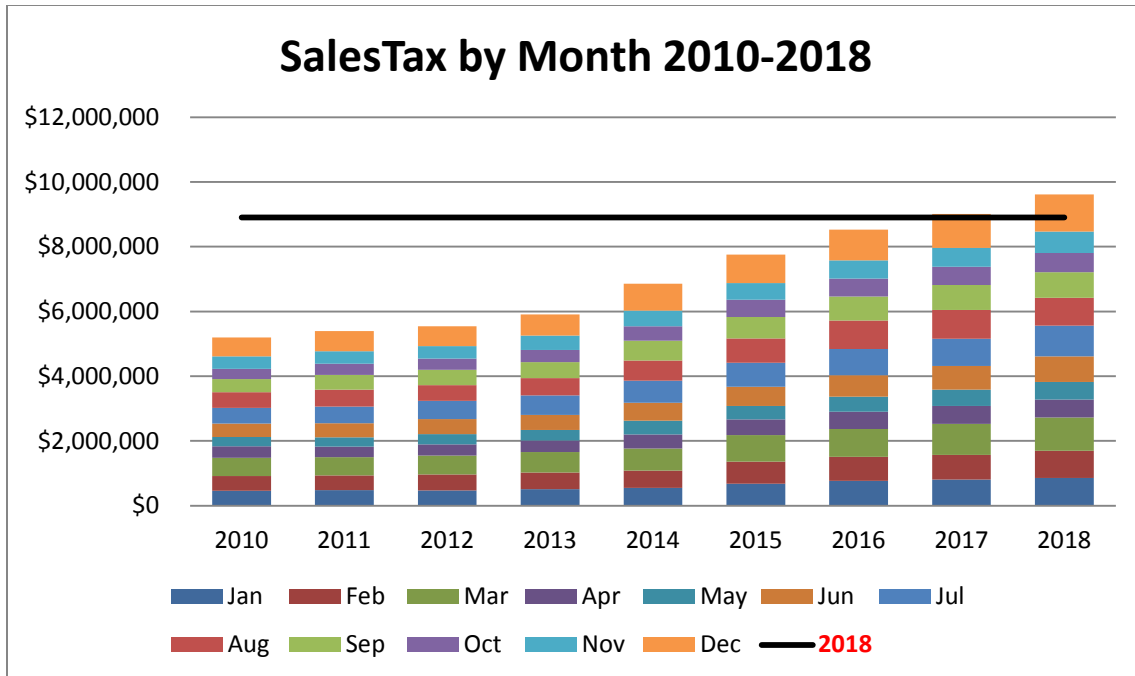


ALLOCATION OF FUNDS:

Wells Fargo Bank West NA - Operating Account Bank Balance	\$2,300,742.03
Wells Fargo Bank West NA - Payroll Account Bank Balance	\$142.90
Wells Fargo Bank West NA - Accounts Payable Bank Balance	(\$583,161.12)
DIT Cash Clearing Account	\$0.00
Colotrust Plus	\$10,239,516.91
CSAFE	\$1,106,576.72
CSIP	\$1,842,398.09
Solera National Bank Savings	\$1,389,045.28
Alpine Bank CD	\$270,950.48
FirstBank CD	\$267,678.97
Wells Fargo CD	\$2,533.41
Flatirons Bank CD	\$240,000.00
SIGMA Securities	\$2,659,184.24
McCook National Bank CD	\$250,000.00
Mountain View Bank of Commerce CD	\$240,000.00
Mutual Securities	\$968,704.47
ProEquities	\$1,477,211.47
TOTAL	\$22,671,523.85

**TREASURER'S REPORT
FUND SUMMARIES - JANUARY 2019**

Department	2018 Budget	Year to Date	% of Budget
General Fund:			
Revenues	\$14,528,650	\$692,622	4.8%
Expenditures	\$13,757,644	\$1,230,337	8.9%
Capital Fund:			
Revenues	\$2,654,007	\$31,660	1.2%
Expenditures	\$5,457,591	\$126,337	2.3%
Conservation Trust Fund:			
Revenues	\$29,300	\$111	0.4%
Expenditures	\$39,600	\$0	0.0%
Water Fund:			
Revenues	\$1,059,000	\$11,684	1.1%
Expenditures	\$1,249,931	\$38,190	3.1%
Open Space Fund:			
Revenues	\$175	\$26	15.1%
Expenditures	\$0	\$0	0.0%
SCHA 5A Fund:			
Revenues	\$1,294,320	\$34,566	2.7%
Expenditures	\$2,092,740	\$86,933	4.2%
Insurance Reserve Fund:			
Revenues	\$1,800	\$448	24.9%
Expenditures	\$65,000	\$0	0.0%
Lodging Tax Fund:			
Revenues	\$568,000	\$1,738	0.3%
Expenditures	\$572,365	\$32,107	5.6%
Marina Fund			
Revenues	\$6,370,000	\$102,642	1.6%
Expenditures	\$5,438,064	\$22,922	0.4%
8% OF THE FISCAL YEAR HAS ELAPSED			



December total sales tax receipts, exceeding expectations, posted an incredibly strong 9.35% growth percentage over December of 2017, or \$98,361 in actual dollars. For full year 2018, sales tax revenues came in at 6.74% over 2017, or \$606,955 in actual dollars. Fourteen of the 17 categories exhibited growth in December; 14 of the 17 categories also exhibited growth for all of 2018.

For December, the most significant growth, in terms of actual dollars, was exhibited in the Restaurants, Retail-General, Home Improvement, Hotels & Inns, Recreation and Vacation Rentals categories. Advantageous skiing and riding conditions, especially as compared to late 2017, had the most significant impact on the Restaurants, Retail-General, Hotels & Inns, Recreation and Vacation Rentals categories. It is important to note, however, that changes on the Federal and State levels in regards to sales tax collection also had an impact on December receipts. Many out-of-town businesses delivering goods into the Town of Frisco have chosen to begin voluntarily collecting and remitting local sales taxes in response to the Supreme Court decision in the Wayfair v. South Dakota case. In addition, the Colorado Department of Revenue implemented new rules in December requiring retailers who ship product to begin collecting sales taxes based on the delivery point, which did have an impact on the amount of county sales tax distributed to the Town for December. The Home Improvement category benefited from a much busier December for construction activity throughout town than is typical.

For 2018 as a whole, the most significant growth, in terms of actual dollars, was exhibited in the Retail-General, Restaurants and Home Improvement categories.

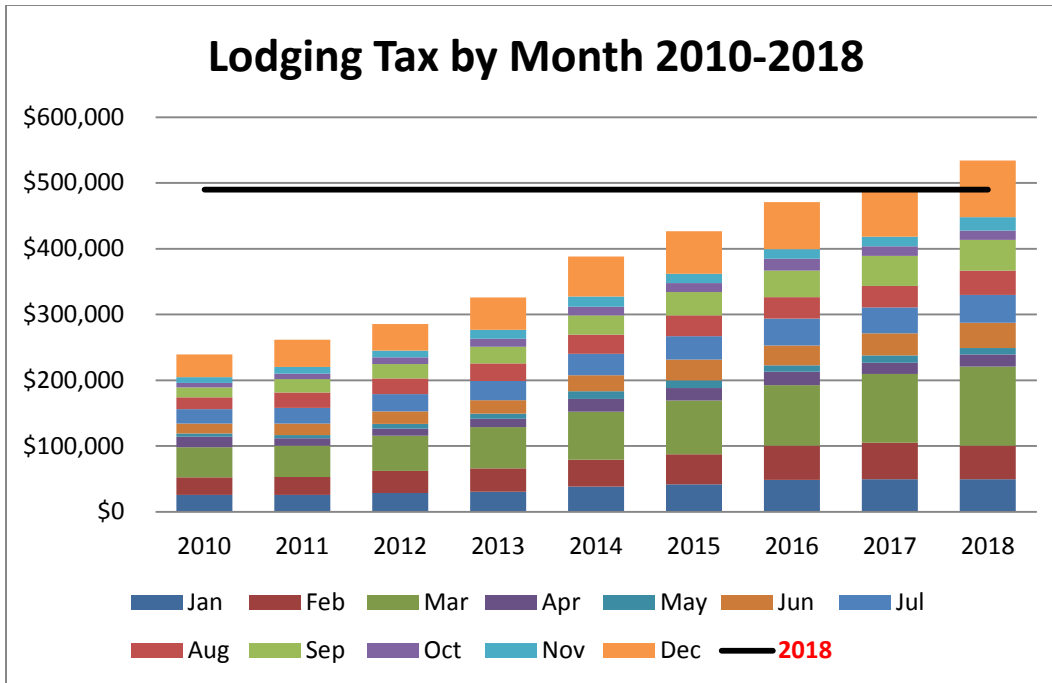
For December, the most significant declines, in terms of actual dollars, were exhibited in the Grocery category. The decline was wholly the result of a late 2017 November filing within the category received in December of 2017, which served to inflate the November of 2018 growth percentage and deflate December's.

For 2018 as a whole, the only declines were exhibited in the Home Furnishings, Automotive and Utility categories. Utility category declines are the easiest to pin down as a result of fluctuations in the price of electricity and natural gas. Declines in the Home Furnishings and Automotive categories are more difficult to explain, though these two categories are the most susceptible to volatility based on individual consumer decisions and the cyclical nature of large purchases. The increasing availability of online retailers as an alternative to local brick and mortar stores may have also had a negative impact, though this impact should decline as more and more out-of-town retailers begin collecting and remitting both the city and county sales tax on deliveries.

2018 total sales tax receipts, **for the 5th year in a row**, set a new record for sales tax revenue generation in the Town of Frisco. Total sales tax receipts exceeded our original 2018 budget by just under 8%; total sales tax receipts also exceeded our most recent year-end projection (prepared in July 2018 for inclusion in the 2019 budget document) by just over 2.75%.

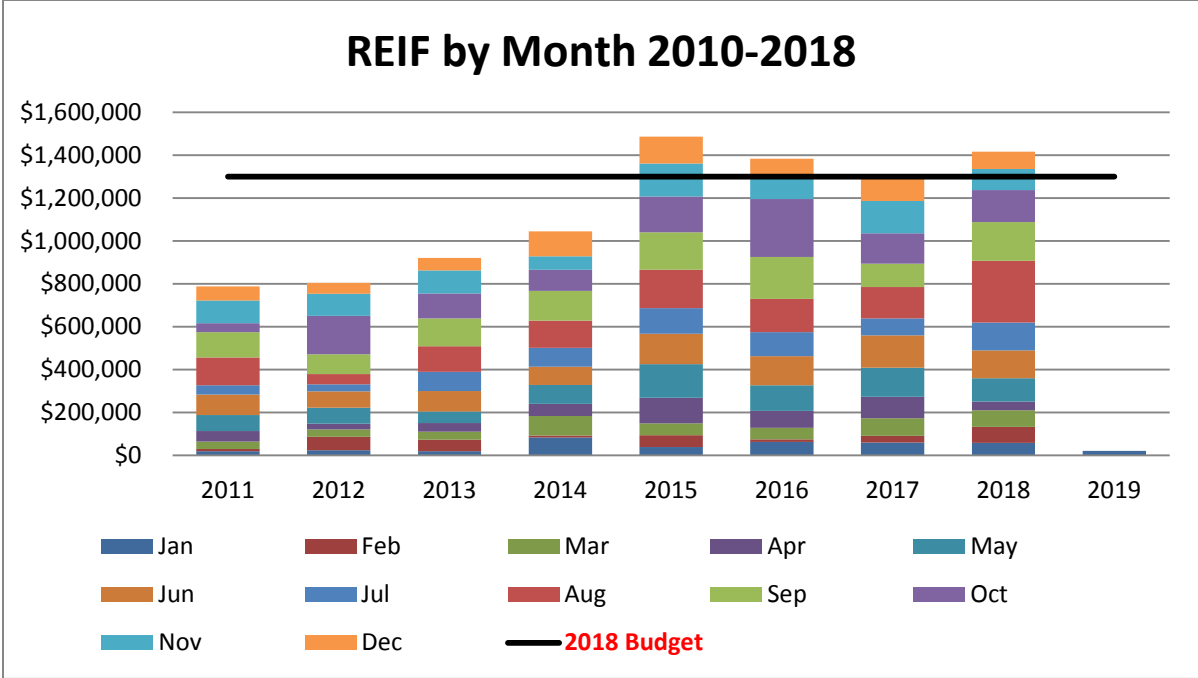
These levels of long-term, record-setting growth present their own unique set of challenges, including the responsible management of such growth, the exacerbation of affordable housing issues, infrastructure concerns, and changes to community character, among others. Complacency may also be a side-effect of almost a decade of uninterrupted increases in commercial activity. Though staff remains bullish on the short-term Frisco economy, downside risks are in the forefront of our minds as we plan for the mid- and long-terms. An economy operating at or near capacity, political, climatic and stock market volatility, and typical economic cyclical nature are all reasons to be hesitant in projecting these levels of growth to continue. Due to unexpected strength over the last half of last year, 2018 final year-end sales tax receipts came in roughly \$200,000 more than staff has budgeted for 2019. That \$200,000 “wiggle room” can disappear more quickly than conventional wisdom might suggest. In fact, on a historical note, Frisco sales tax revenues declined by almost \$1,000,000 between 2007 and 2009.

None of which is to say we shouldn't be incredibly encouraged by the strides our business community has made in recent years, with the support of forward-looking infrastructure and marketing improvement efforts undertaken by the Town. Smart, strategic investments and sound decision-making leave us well prepared to face the challenges ahead and with a strong foundation to build upon.



Year-to-date through December is up 8.93% or \$43,799 compared to Y-T-D 2017. For the month of December, revenues are up 20.01% or \$14,406 compared to December 2017.

All in all, full year 2018 lodging tax revenues reflect a very strong local economy, buoyed by strength on the national and state levels, and the commensurate growth in population, employment and ancillary spending. Multiple recent studies indicate that, by many important metrics, Colorado has one of, if not the, strongest of all state economies in the United States. Frisco and Summit County have both benefited from and contributed to that positioning.



Year-to-date through January is down 63.89% or \$37,501 compared to Y-T-D 2018. The actual year-to date dollar amount is \$21,198 compared to \$58,699 Y-T-D 2018.

REIF - JANUARY 2019		
SELLER'S LAST NAME	BUYER'S LAST NAME AND ADDRESS	REIF AMOUNT
QUERRARD LIVING TRUST	HUNZEKER, 309 S 3RD AVE, #2	4940.00
LEATHERS	KEYSTONE REAL ESTATE LLC, 60 E MAIN ST, A	2250.00
SALZBERG	HEDIE M SALZBERG II FAMILY LIMITED PARTNERSHIP, 29B HAWN DR	0.00
SALZBERG	HEDIE M SALZBERG II FAMILY LIMITED PARTNERSHIP, 319 FRISCO ST	0.00
SALZBERG	HEDIE M SALZBERG II FAMILY LIMITED PARTNERSHIP, 401 PITKIN ST	0.00
HENRY	M&J HENRY REALTY TRUST, 560 WATER DANCE DR	0.00
READ	KOESTER, 401 E MAIN ST, UNIT 2D	7000.00
KOESTER	SUMMIT MAJESTY LLC, 401 E MAIN ST, UNIT 2D	0.00
FIELDING	FIELDING, 107 PITKIN ST	0.00
GUTHMILLER/PIENS ESTATE	PIENS HIDEAWAY LLC, 200 GRANITE ST, UNIT 17	0.00
HALL/BESEDA	HALL, 16 MERIDIAN ALLEY	0.00
BASECAMP SHOPS & RESIDENCES LLC	HARRIS, 100 BASECAMP WAY, #203	2764.91
BASECAMP SHOPS & RESIDENCES LLC	MILLER/BACHMAN, 100 BASECAMP WAY, #207	2763.01
BASECAMP SHOPS & RESIDENCES LLC	HOSKINS, 100 BASECAMP WAY, #208	980.31
RAY	JASOVIC, 749 LAGOON DR, #3D	500.00
WINSLOW LIVING TRUST	CHARLES D WINSLOW REVOCABLE TRUST - 1992	0.00

21,198.23

Pappas, Janice

From: Wickman, Tom
Sent: Sunday, February 24, 2019 3:35 PM
To: Pappas, Janice
Subject: Fwd: Natalie Frey

For our council report
Sent from my iPhone

Begin forwarded message:

From: "Pappas, Janice" <JaniceP@townoffrisco.com>
Date: February 15, 2019 at 12:14:13 PM MST
To: "Rosenfield, Jay" <JayR@townoffrisco.com>, "Koppels, Sean" <Seank@townoffrisco.com>
Cc: "Wickman, Tom" <TomW@townoffrisco.com>
Subject: Natalie Frey

Ms. Frey just called to say thank you for being so helpful and nice last night. She and her family had skis stolen last night, and wanted to let you know how much she appreciated your help.

Sincerely,

Janice Pappas
Office Manager
Frisco Police Department
PO Box 4100
Frisco, CO 80443
P: 970-668-3579
F: 970-668-5638
www.townoffrisco.com



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: VANESSA AGEE, MARKETING AND COMMUNICATIONS DIRECTOR
RE: MARKETING AND EVENTS DEPARTMENT STAFF REPORT
DATE: MARCH 12, 2019

Public Information: Vanessa Agee worked with Public Works Director Jeff Goble and Water Foreman Ryan Thompson to provide accurate, understandable and timely information regarding the recent lead and copper testing results. Together, we crafted a Frisco specific public education piece, based on the State of Colorado template, which was sent to all water users and provided to healthcare and childcare/education providers, and a media release, which was sent to local media and all four Denver broadcast stations. The Summit Daily wrote two articles based on these communication efforts. We also did two paid ads in the Summit Daily.

Destination Public Relations: Winter coverage has been prolific, especially in light of the avalanches along the I70 corridor during the weekend of March 2. This coverage mentions Frisco consistently and has been included in countless social media posts and has seen broadcast coverage as far reaching as [ABC's Good Morning America](#). As no one was injured, this coverage tends to be positive/neutral and does a solid job of expressing that the area has snow and that good skiing is a reality.

Frisko continues to see excellent winter coverage, including several stories, which have been in the works for several years.

- Frisko hosted writer Tracy Block in 2017, and [her article on Frisco and Copper in Thrillist](#) was published in late February. Her headline called out Frisco stating "Why Frisco is The Underrated Colorado Town You Need to Visit ASAP." Thrillist is written for those in their twenties and thirties who work hard and play harder. The outlet covers the best food, drinks, gear, gadgets, sports, travel and more reaching 16.31 million unique monthly visitors.
- In February 2016, Frisko hosted freelance writer Katie Hearsum, and staff took her on a snowshoe trek between Frisco and Breckenridge on the Peaks Trail and then back to Frisco using the Breckenridge Ski Resort gondola and the Summit Stage. This story was published by 5280.com as a ["Snowshoe Hike We Like: Peaks Trail"](#) in February 2019. 5280.com reaches 201,760 unique monthly visitors.
- The Frisco Adventure Park hosted Florida-based family influencer, Ashley Solberg, earlier this month. Ashley is based in Tampa, and she runs the Instagram

channel, [@ashleysolbergblog](#), which has 37K followers. During her visit to Frisco, Ashley shared one Instagram [post](#) to her feed and 21 Instagram Stories, which may be viewed [here](#). In all, Ashley's coverage reached more than 22,306 people, encouraging like-minded moms to visit Frisco and the Adventure Park, as part of a family getaway to the mountains,

- Channel 2 [covered Mardi Gras 4Paws](#) as the “Best Thing in Colorado Today”, as a result of sending professional event photography to them. The estimated reach of this broadcast was 15,000 viewers.
- Fox31's [Colorado's Best covered Snowshoe for the Cure](#). The estimated reach of this broadcast was 8,000 viewers.
- DiningOut included BrewSki in their roundup of [“9 Can't-Miss Events this March.”](#) DiningOut.com receives 27,000 unique monthly visitors.
- Eater Denver included four Frisco spots in their article [“Where To Eat and Drink in Summit County, Colorado: Five mountain towns form one intertwined dining scene”](#). Eater Denver receives 45,000 unique monthly visitors online.
- Frisco and Two Below Zero are included in a story from Mile High Mamas: [“Six More Weeks of Winter: Six Awesome Frozen Adventures.”](#) This is a result of hosting freelance writer, Julie Bielenberg, several years ago. Mile High Mamas serves as an entertaining community resource for Denver area moms. It features regular posts by some of Colorado's most popular Mommy Bloggers, a message board, event calendar, cutest kid contest and regular giveaways. It receives 50,402 unique monthly visitors.
- The Know, Denver Post's online presence, featured Mardi Gras 4Paws in their article [“Mardi Gras 2019 in Colorado: 15 places to eat, drink and party”](#). The site gets 531,810 unique monthly visitors.

Social Media: The [primary Town of Frisco Facebook](#) page broke 10,000 followers in late 2018 and is up to 10,400 followers at this point.

Special Events:

Susan G. Komen Snowshoe for the Cure - Frisco welcomed almost 800 participants at the Snowshoe for the Cure on Saturday, March 2, 2019, and Komen Colorado has raised \$36,000 to date on fundraising alone (not including registration fees). The Town of Frisco provided a registration party on Friday night and the site at the Frisco Nordic Center with the necessary trail marking, electrical, equipment (tents and stage included) and staff support (Nordic, Events, Public Works and Police).



Photo credit: Bill Linfield

Mardi Gras 4Paws - The Town of Frisco partnered with Hope for Animals – Clear Creek County this year for the 6th Annual Mardi Gras 4Paws on Saturday, March 2, 2019, as LAPS (who has benefited in past years) decided to focus their attention on other fundraising opportunities. Hope for Animals helps abandoned, lost and suffering animals through rescue, shelter and public education, and they were able to pull in great volunteers supported by a wonderful animal-centric mission. There were 40+ dog participants at the parade, which made its way from 3rd Avenue and along the sidewalks of Main Street and back to a street party and awards at 3rd Avenue. The Uptown put out a bacon aid station for the dogs in their Mardi Gras best, and let staff know post-event that The Uptown was unusually busy during the event with spectators who wanted seats near the windows.



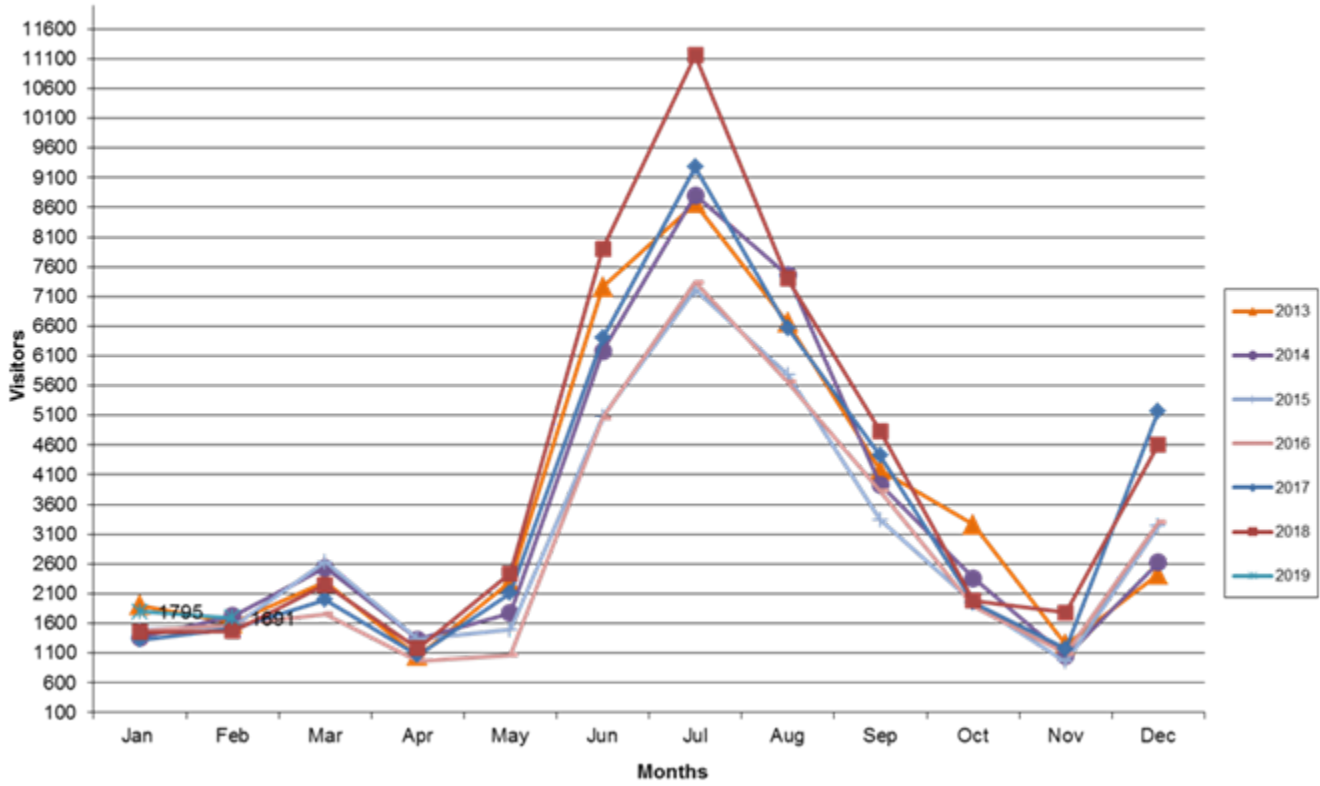
Photo credit: Matt Lit

Frisco/Copper Visitor Information Center:

Visitor Information Center numbers for February 2019

- The Information Center saw 1,691 visitors in February 2019 (1,464 in February 2018).
- The Information Center answered 178 phone calls in February 2019 (283 in February 2018).
- Public computer use- 39 in February 2019 (42 in February 2018)
- Restroom usage
 - Men's restroom usage February 1-28, 2019: 1,536
 - Women's restroom usage February 1-28, 2019: 1,580
- Sara Skinner, Recreation Programs Coordinator, took Frisco's Water Bottle Pledge to the Metro State Recreation Job Fair. She had 25 students and other recreation recruiters sign the pledge and take water bottles. The pledge continues to be popular in town as well with 77 pledges taken this month.
- The Information Center staff has been covering employee breaks and lunches at the Frisco Historic Park and Museum, as needed, and Tasha Wilson is also acting as the Interim Museum Manager.
- Tasha Wilson interviewed with the Development Research Partners (DRP) about the potential impact of high speed transit on visitors to Frisco and the surrounding area and provided general information about the operations at the Frisco/Copper Visitor Information Center. DRP has been commissioned to conduct a study to evaluate economic impacts to Colorado regarding the development of a high-speed transit system that would connect Eagle-Vail Airport with Denver International Airport, a 155-mile stretch through the I-70 Mountain Corridor and the Metro Denver region.
- Tasha Wilson has also been working closely with the Colorado Tourism Office (CTO), as part of the CTO Leadership Journey Program, to create a state-wide visitor services committee with representation from each of the newly established travel regions to partner on ways to connect the visitor services/centers industry across the state.
- The Marketing and Information Center staff hosted the quarterly Frisco lodging meeting on February 12. Seven of 12 properties/companies attended the meeting. The agenda included: a presentation from Briley Peters of JackRabbit; a tax roundup by Chad Most; event roundup by Nora Gilbertson; an opportunity to meet Nancy Kerry; a media coverage roundup by Vanessa Agee; green initiatives opportunities discussion; and a review of 2018 Visitor Information Center statistics.
- Guest comment highlights: "Thank goodness you were here!!", "Unbelievable scenery", "Lovely town & friendly people", "Great stop to hang out due to accident", "Awesome info"

Walk in Visitors 2013-2019



Report Criteria:

Business.License status = "Active"
 Business.Year opened = "February 2019"
 Business.Owner.Sequence number = 1

in or out City	Business Name	Name	Location	Location City	Business Telephone 1	Business Activity
In	Barre Forte Summit County	Huston, Katelyn	409 Main Street	Frisco	970-333-1350	Recreation
In	Crafted Contracting	Vassar, Blake	501 Belford Street	Frisco	262-751-7156	Retail - HomeImprove
In	Frisco Boutique	Sharpe, Cynthia	411 Main Street	Frisco	970-668-3273	Retail - Clothing
In	H&R Block	Western Colorado Financial Services	842 Summit Boulevard Unit 11A	Frisco	970-668-8308	Services
In	Higher Level Frisco	Holmes, Donald	110 Alpine Drive	Frisco	970-389-9430	Vacation Rentals
In	Massage Studio LLC	Anderson, Jennifer	1000 Summit Boulevard Suite 200	Frisco	970-389-6103	Health/Beauty
In	Peak Oxygen Service	Peak Oxygen Service	39 North Cabin Green	Frisco	970-368-9190	Retail - General
In	Stephanie Ford	Ford, Stephanie	604 Granite Street Apt 101-1	Frisco	831-236-8390	Vacation Rentals
Out	ADP LLC	ADP LLC	One ADP Boulevard MS340	Roseland	973-974-4718	Retail - Office
Out	Alltel Corporation dba Verizon Wir	Alltel Corporation	One Verizon Way	Basking Ridge	630-857-2290	Utility
Out	Carhartt	Carhartt	5750 Mercury Drive	Dearborn	313-271-8460	Retail - Clothing
Out	Cyberpower PC	Cyberpower Inc	730 Baldwin Park Blvd	City of Industry	626-813-7730	Retail - Office
Out	Eloquii Design	Walmart Inc.	Two Miranova Place Suite 280	Columbus	479-277-1182	Retail - Clothing
Out	Fair Energy Submetering	Dunn, James	919 Snowberry	Longmont	303-520-1242	Utility
Out	IncStores	IncStores	2045 South Vineyard Avenue Suit	Mesa	800-613-0996	Retail - HomeImprove
Out	Jackson Galaxy Enterprises	Jackson Galaxy	9190 West Olympic Boulevard #4	Beverly Hills	424-204-9398	Retail - General
Out	Lennox Industries Inc	Lennox Industries	2100 Lake Park Blvd	Richardson	972-497-6101	Retail - HomeImprove
Out	Macrow Solutions	Sansone, Michael	2554 County Road 4	Alma	970-708-4942	Retail - HomeImprove
Out	Meritech	Meritech Systems	720 Corporate Circle Ste K	Golden	303-790-4670	Retail - HomeImprove
Out	Mountain Estate Accents	Burki, Heid	124 Main Street Unit 101	Dillon	720-226-0468	Retail - HomeImprove
Out	Norjan & Associates	Walker, Sherrie and Kirk	705 Powderhorn Drive	Monument	623-221-2516	Retail - Office
Out	Palmeto State Armory	Palmetto State Armory	3850 Fernandina Road	Columbia	803-995-8885	Retail - General
Out	Picasso	Walmart Inc.	850 Cherry Avenue	San Bruno	479-277-1182	Retail - Furnishings
Out	Sam's West	Walmart Inc.	702 SW 8th Street	Bentonville	479-277-1182	Retail - General
Out	Schofield Excavation	Schofield, Levi	106 Oakridge Drive #201	Gypsum	970-521-3478	Retail - HomeImprove
Out	Tennant Sales and Service Comp	Tennant Sales and Service Company	701 North Lilac Drive	Minneapolis	763-540-1200	Retail - General

Town of Frisco - Monthly Sales Tax Report

<u>Restaurants</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		<u>Change in \$</u>
January	103,336	123,808	138,059	140,750	156,201	10.98%	15451
February	100,782	122,488	133,274	137,809	149,301	8.34%	11492 #
March	133,737	144,212	151,570	165,067	172,194	4.32%	7127
April	78,405	74,813	88,629	80,381	92,165	14.66%	11784
May	56,115	60,260	70,262	79,434	87,404	10.03%	7970
June	88,158	98,021	119,444	136,345	135,401	-0.69%	(944)
July	129,813	153,430	169,660	158,493	190,926	20.46%	32433
August	109,970	141,945	167,364	159,088	159,691	0.38%	603
September	109,745	109,126	125,781	128,645	135,573	5.39%	6928
October	75,534	90,225	84,887	89,351	93,044	4.13%	3693
November	64,463	78,024	79,326	82,926	96,329	16.16%	13403
December	116,864	130,367	138,261	141,064	170,659	20.98%	29595
Total	\$1,166,922	\$1,326,719	\$1,466,517	\$1,499,353	\$1,638,888	9.31%	139535

<u>Hotels & Inns</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	50,262	54,785	60,600	64,623	60,926	-5.72%	(3697)
February	50,375	62,759	70,275	75,564	65,361	-13.50%	(10203)
March	60,740	70,375	66,762	67,259	78,498	16.71%	11239
April	39,662	26,345	36,272	27,374	20,071	-26.68%	(7303)
May	18,938	16,311	15,644	15,695	14,470	-7.81%	(1225)
June	28,027	37,136	33,721	34,961	37,018	5.88%	2057
July	47,085	51,338	55,083	54,072	56,072	3.70%	2000
August	41,934	46,645	45,372	46,517	52,877	13.67%	6360
September	30,846	35,373	38,028	38,566	34,959	-9.35%	(3607)
October	19,819	20,487	22,071	21,741	21,835	0.43%	94
November	25,445	21,640	20,427	17,926	23,560	31.43%	5634
December	56,659	63,676	59,899	54,167	77,427	42.94%	23260
Total	\$469,792	\$506,870	\$524,154	\$518,465	\$543,074	4.75%	24609

<u>Vacation Rntl</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	19,558	20,546	30,646	25,276	46,147	82.57%	20871
February	17,033	22,195	23,104	32,150	39,981	24.36%	7831
March	58,871	68,814	80,560	97,491	111,099	13.96%	13608
April	9,681	9,400	11,939	11,480	17,470	52.18%	5990
May	2,485	3,765	946	7,252	5,995	-17.33%	(1257)
June	12,129	16,978	15,275	24,430	29,184	19.46%	4754
July	10,771	13,125	16,337	20,191	23,448	16.13%	3257
August	8,508	9,918	12,902	14,905	19,450	30.49%	4545
September	19,017	22,996	27,228	39,637	42,030	6.04%	2393
October	3,850	1,916	7,170	12,026	14,501	20.58%	2475
November	5,791	7,037	8,011	22,146	26,094	17.83%	3948
December	43,685	45,672	58,489	73,342	87,032	18.67%	13690
Total	\$211,379	\$242,362	\$292,607	\$380,326	\$462,431	21.59%	82105

<u>Grocery</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	70,024	140,246	153,153	170,886	177,768	4.03%	6882
February	70,258	137,865	148,305	165,669	173,670	4.83%	8001
March	76,500	144,155	154,072	181,072	197,143	8.88%	16071
April	60,590	112,876	119,076	142,933	130,291	-8.84%	(12642)
May	97,380	76,414	84,800	101,259	109,421	8.06%	8162
June	101,576	92,284	106,376	119,132	147,908	24.15%	28776
July	163,734	133,132	169,321	157,304	221,271	40.66%	63967
August	128,309	207,378	228,754	272,161	173,636	-36.20%	(98525)
September	115,078	127,602	186,582	154,227	161,446	4.68%	7219
October	78,833	103,790	102,128	106,158	110,704	4.28%	4546
November	94,422	100,390	116,365	97,386	141,301	45.09%	43915
December	149,835	150,928	159,419	259,177	208,191	-19.67%	(50986)
Total	\$1,206,539	\$1,527,060	\$1,728,351	\$1,927,364	\$1,952,750	1.32%	25386

<u>Retail -Gnrl</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	131,266	134,380	142,397	142,695	156,082	9.38%	13387
February	119,736	119,483	126,400	125,800	135,324	7.57%	9524
March	140,816	146,602	148,339	146,621	169,424	15.55%	22803
April	104,528	100,391	103,805	115,380	107,993	-6.40%	(7387)
May	103,037	106,097	111,790	110,343	124,256	12.61%	13913
June	130,850	136,153	147,974	150,766	163,758	8.62%	12992
July	142,153	151,700	163,840	161,460	180,059	11.52%	18599
August	137,315	140,918	149,761	149,692	166,988	11.55%	17296

September	124,958	126,401	125,594	138,046	142,780	3.43%	4734
October	107,498	136,545	127,889	119,127	134,034	12.51%	14907
November	131,649	123,486	131,388	142,805	156,533	9.61%	13728
December	177,389	189,409	184,112	198,047	224,095	13.15%	26048
Total	\$1,551,195	\$1,611,565	\$1,663,289	\$1,700,782	\$1,861,326	9.44%	160544

<u>Arts/Crafts</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	1,378	940	648	318	163	-48.74%	(155)
February	2,683	1,453	2,984	244	30	-87.70%	(214)
March	1,903	1,941	703	784	1,776	126.53%	992
April	902	1,061	665	3,478	56	-98.39%	(3422)
May	1,430	824	638	277	147	-46.93%	(130)
June	2,404	1,466	1,296	633	611	-3.48%	(22)
July	2,719	2,202	1,590	1,378	2,441	77.14%	1063
August	3,762	3,616	6,859	5,595	5,767	3.07%	172
September	6,624	7,918	1,815	979	2,316	136.57%	1337
October	989	1,787	218	410	388	-5.37%	(22)
November	911	1,142	663	38	360	847.37%	322
December	2,265	2,565	1,412	1,814	2,208	21.72%	394
Total	\$27,970	\$26,915	\$19,491	\$15,948	\$16,263	1.98%	315

<u>Automotive</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	26,985	30,373	37,268	34,626	28,339	-18.16%	(6287)
February	12,128	24,858	25,379	23,245	23,055	-0.82%	(190) ##
March	23,724	25,806	25,220	25,450	23,886	-6.15%	(1564)
April	22,222	25,337	28,611	23,487	23,770	1.20%	283
May	22,627	24,080	26,745	24,989	25,517	2.11%	528
June	24,829	26,537	27,009	31,874	28,383	-10.95%	(3491)
July	28,006	34,525	30,145	32,522	31,531	-3.05%	(991)
August	31,675	31,481	34,226	34,581	31,222	-9.71%	(3359)
September	26,275	28,013	31,170	27,669	27,763	0.34%	94
October	36,894	28,581	34,176	41,342	35,628	-13.82%	(5714)
November	23,331	36,699	33,763	32,893	31,984	-2.76%	(909)
December	43,739	22,378	39,044	30,384	31,580	3.94%	1196
Total	\$322,435	\$338,668	\$372,756	\$363,062	\$342,658	-5.62%	(20404)

<u>Clothing</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	5,702	6,066	7,316	8,757	12,634	44.27%	3877
February	6,785	7,887	10,476	11,819	9,995	-15.43%	(1824)
March	9,837	11,828	11,576	16,478	14,832	-9.99%	(1646)
April	5,505	4,588	8,145	5,047	8,061	59.72%	3014
May	6,688	5,346	6,956	11,026	10,686	-3.08%	(340)
June	11,383	11,772	13,912	16,222	19,307	19.02%	3085
July	16,274	16,546	21,339	22,573	20,945	-7.21%	(1628)
August	12,992	15,228	18,253	19,487	23,539	20.79%	4052
September	14,351	15,760	17,476	20,336	23,046	13.33%	2710
October	7,574	7,723	9,580	11,300	11,144	-1.38%	(156)
November	6,864	6,602	6,236	8,621	8,977	4.13%	356
December	13,526	15,419	21,644	19,570	21,637	10.56%	2067
Total	\$117,481	\$124,765	\$152,909	\$171,236	\$184,803	7.92%	13567

<u>Furnishings</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	11,837	16,791	20,878	22,719	29,351	29.19%	6632
February	12,286	18,231	20,521	19,223	26,323	36.93%	7100
March	18,981	15,287	24,373	25,798	28,089	8.88%	2291
April	9,434	12,560	19,930	12,315	12,818	4.08%	503
May	16,282	16,083	20,545	20,607	18,783	-8.85%	(1824)
June	18,333	23,036	24,167	25,230	21,420	-15.10%	(3810)
July	19,816	25,180	25,821	39,353	31,991	-18.71%	(7362)
August	23,877	21,653	29,061	30,813	29,667	-3.72%	(1146)
September	24,741	23,616	29,937	46,867	30,132	-35.71%	(16735)
October	20,337	18,569	33,785	29,650	29,787	0.46%	137
November	24,645	23,175	27,183	29,019	27,263	-6.05%	(1756)
December	25,315	29,734	45,303	37,822	32,545	-13.95%	(5277)
Total	\$225,884	\$243,915	\$321,504	\$339,416	\$318,169	-6.26%	(21247)

<u>Gifts</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	6,342	9,042	7,808	6,637	11,369	71.30%	4732
February	7,219	7,293	8,675	7,974	7,254	-9.03%	(720)
March	8,253	11,627	11,213	11,591	11,813	1.92%	222
April	7,898	5,190	6,519	6,878	6,567	-4.52%	(311)
May	3,374	5,036	5,376	5,058	6,240	23.37%	1182

June	9,733	9,219	9,752	11,294	11,862	5.03%	568
July	13,267	14,397	15,760	13,126	15,028	14.49%	1902
August	9,232	10,777	12,240	12,876	13,289	3.21%	413
September	14,827	10,816	13,345	11,731	12,889	9.87%	1158
October	7,250	8,859	8,141	7,872	7,212	-8.38%	(660)
November	5,989	6,270	8,045	7,408	6,632	-10.48%	(776)
December	13,960	16,344	18,320	15,876	16,676	5.04%	800
Total	\$107,344	\$114,870	\$125,194	\$118,321	\$126,831	7.19%	8510

<u>HomeImprove</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	15,237	20,378	18,844	22,471	19,894	-11.47%	(2577)
February	15,734	14,208	20,598	1,091	44,950	4020.07%	43859
March	21,660	23,202	25,375	41,251	37,378	-9.39%	(3873)
April	16,427	18,705	23,179	34,112	36,382	6.65%	2270
May	25,965	32,094	32,369	41,625	58,853	41.39%	17228
June	44,022	43,476	55,720	63,439	74,330	17.17%	10891
July	30,089	37,552	40,048	45,246	63,318	39.94%	18072
August	31,389	30,749	46,690	56,190	65,861	17.21%	9671
September	47,225	56,080	45,570	67,264	69,828	3.81%	2564
October	32,594	30,274	43,848	48,019	59,644	24.21%	11625
November	20,433	29,620	37,462	38,337	41,359	7.88%	3022
December	38,804	34,166	38,477	43,967	68,225	55.17%	24258
Total	\$339,579	\$370,504	\$428,180	\$503,012	\$640,022	27.24%	137010

<u>Liquor</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	21,789	29,879	34,109	34,908	37,193	6.55%	2285
February	23,806	31,520	37,225	38,396	39,724	3.46%	1328
March	24,489	30,811	36,457	38,847	42,443	9.26%	3596
April	13,200	19,425	19,790	19,673	19,296	-1.92%	(377)
May	11,980	15,038	16,886	17,900	19,858	10.94%	1958
June	16,440	21,180	25,571	26,991	29,682	9.97%	2691
July	23,330	31,359	35,464	34,824	38,594	10.83%	3770
August	21,650	25,425	29,872	23,802	33,933	42.56%	10131
September	14,838	22,070	24,853	26,368	25,824	-2.06%	(544)
October	13,223	17,541	18,987	18,851	20,009	6.14%	1158
November	16,392	21,046	23,545	24,361	27,464	12.74%	3103
December	31,128	41,152	43,585	46,989	50,544	7.57%	3555
Total	\$232,265	\$306,446	\$346,344	\$351,910	\$384,564	9.28%	32654

<u>Office</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	2,395	2,561	2,419	2,984	3,640	21.98%	656
February	1,780	2,850	2,471	3,231	2,799	-13.37%	(432)
March	4,799	3,084	3,316	3,862	3,882	0.52%	20
April	2,842	3,132	2,244	2,453	3,248	32.41%	795
May	2,398	1,958	2,400	3,104	3,188	2.71%	84
June	3,156	2,485	2,822	4,482	4,436	-1.03%	(46)
July	2,712	2,225	2,824	3,302	3,446	4.36%	144
August	2,268	2,499	2,977	3,265	3,818	16.94%	553
September	3,381	3,427	4,314	4,539	4,089	-9.91%	(450)
October	2,212	2,654	3,186	3,434	3,471	1.08%	37
November	2,952	2,396	3,102	3,364	3,296	-2.02%	(68)
December	3,536	5,383	5,818	6,278	8,999	43.34%	2721
Total	\$34,431	\$34,654	\$37,893	\$44,298	\$48,312	9.06%	4014

<u>Health/Beauty</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	1,499	2,586	5,808	3,561	7,074	98.65%	3513
February	1,696	1,616	3,653	7,724	3,295	-57.34%	(4429)
March	9,426	5,434	7,078	6,870	5,994	-12.75%	(876)
April	1,527	2,533	3,769	3,851	4,237	10.02%	386
May	1,561	2,875	3,572	3,680	3,077	-16.39%	(603)
June	2,791	5,122	5,849	6,018	6,437	6.96%	419
July	1,321	2,532	3,547	3,744	3,916	4.59%	172
August	1,352	2,263	4,099	3,721	3,187	-14.35%	(534)
September	4,373	7,258	6,144	5,453	8,540	56.61%	3087
October	1,263	1,845	3,666	2,710	3,513	29.63%	803
November	2,239	1,882	3,552	2,826	2,621	-7.25%	(205)
December	7,586	6,728	6,966	6,916	13,527	95.59%	6611
Total	\$36,634	\$42,674	\$57,703	\$57,074	\$65,418	14.62%	8344

<u>Recreation</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	31,680	26,830	39,025	48,459	42,007	-13.31%	(6452)
February	35,013	45,237	38,817	44,530	48,795	9.58%	4265

March	45,072	53,634	50,045	53,565	59,541	11.16%	5976
April	15,844	15,578	16,752	20,888	16,770	-19.71%	(4118)
May	10,563	11,669	19,650	14,608	12,596	-13.77%	(2012)
June	29,602	36,185	34,470	35,604	33,700	-5.35%	(1904)
July	19,807	22,065	28,445	42,432	29,948	-29.42%	(12484)
August	19,366	23,953	33,707	4,322	24,299	462.22%	19977
September	18,929	27,795	23,680	22,731	25,031	10.12%	2300
October	8,462	15,781	12,161	10,447	10,601	1.47%	154
November	19,462	21,554	18,903	17,648	23,479	33.04%	5831
December	52,494	57,921	60,891	54,047	67,869	25.57%	13822
Total	\$306,294	\$358,202	\$376,546	\$369,281	\$394,636	6.87%	25355

<u>Utility</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	46,904	51,370	48,906	49,663	44,089	-11.22%	(5574)
February	41,865	42,255	39,071	41,972	44,868	6.90%	2896
March	39,412	41,961	40,585	42,460	39,552	-6.85%	(2908)
April	36,330	33,246	34,472	34,060	34,859	2.35%	799
May	32,140	29,498	28,371	29,576	29,875	1.01%	299
June	27,021	26,961	26,823	31,178	27,374	-12.20%	(3804)
July	25,519	27,369	16,705	34,970	26,360	-24.62%	(8610)
August	27,264	27,227	30,946	34,989	24,172	-30.92%	(10817)
September	27,002	25,370	27,369	18,689	26,115	39.73%	7426
October	29,833	27,653	29,297	28,058	30,857	9.98%	2799
November	24,978	26,771	37,326	31,353	27,416	-12.56%	(3937)
December	42,320	43,814	41,028	38,566	45,407	17.74%	6841
Total	\$400,588	\$403,495	\$400,899	\$415,534	\$400,944	-3.51%	(14590)

<u>Marijuana</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>		
January	9,733	14,309	24,010	31,168	27,131	-12.95%	(4037)
February	8,541	20,072	22,824	25,041	26,085	4.17%	1044
March	9,680	15,930	25,726	28,648	29,899	4.37%	1251
April	9,011	15,011	15,819	16,147	16,065	-0.51%	(82)
May	5,943	9,480	10,559	11,489	12,648	10.09%	1159
June	6,845	11,318	13,787	15,041	16,920	12.49%	1879
July	9,023	17,586	19,387	18,086	17,930	-0.86%	(156)
August	7,904	15,034	19,542	19,409	24,648	26.99%	5239
September	6,933	12,761	15,544	16,677	16,074	-3.62%	(603)
October	5,562	11,563	14,585	15,612	13,013	-16.65%	(2599)
November	5,778	10,236	8,481	14,784	13,171	-10.91%	(1613)
December	11,305	19,464	22,820	24,375	24,141	-0.96%	(234)
Total	\$96,258	\$172,764	\$213,084	\$236,477	\$237,725	0.53%	1248

<u>Summary</u>	<u>2014*</u>	<u>2015*</u>	<u>2016*</u>	<u>2017*</u>	<u>2018</u>		
January	546,194	670,581	771,894	810,501	860,008	6.11%	49507
February	519,179	662,198	734,052	761,482	840,810	10.42%	79328
March	678,220	798,773	862,970	953,114	1,027,443	7.80%	74329
April	424,997	465,180	539,616	559,937	550,119	-1.75%	(9818)
May	412,963	407,348	457,509	497,922	543,014	9.06%	45092
June	550,454	588,011	663,968	733,640	787,731	7.37%	54091
July	676,416	718,677	815,316	843,076	957,224	13.54%	114148
August	610,863	741,675	872,625	891,413	856,044	-3.97%	(35369)
September	602,210	649,621	744,430	768,424	788,435	2.60%	20011
October	446,165	514,230	555,775	566,108	599,385	5.88%	33277
November	469,966	507,734	563,778	573,841	657,839	14.64%	83998
December	819,105	855,656	945,488	1,052,401	1,150,762	9.35%	98361
Total	\$6,756,732	\$7,579,684	\$8,527,421	\$9,011,859	\$9,618,814	6.74%	606955

YTD 2017 **\$9,011,859**
YTD \$ Difference **\$606,955**
YTD Change **6.74%**

* Totals include late penalties & interest...

***** Beginning January 2014, medicinal marijuana sales tax will be removed from the Health/Beauty category and reported in a new category, along with retail marijuana sales tax

A significant collection from prior periods occurred in the Restaurant category in February of 2013, inflating totals reported in that period and leading to a significant decline in 2014

Based on a vendor's incorrectly filed returns at the State level, the Dept. of Revenue redistributed a significant amount of County sales tax in the Automotive category for February of 2014

**TOWN OF FRISCO
PROCLAMATION
MARCH 10-16, 2019
GIRL SCOUT WEEK**

WHEREAS, Tuesday, March 12, 2019, marks the 107th anniversary of Girl Scouts of the USA, founded in 1912 by Juliette Gordon Low in Savannah, Georgia; and

WHEREAS, Girl Scouts, the largest organization for girls in the world, is the leading authority and advocate for girls inspiring millions of girls and women with the highest ideals of courage, confidence and character; and

WHEREAS, Girl Scouts is a safe place for girls to explore their world, develop an understanding and empathy for others and take action to make the world a better place; and

WHEREAS, through leadership experiences that build self-confidence, creative decision-making skills and teamwork, girls develop real-world leadership abilities that will last them a lifetime in Girl Scouts; and

WHEREAS, Girl Scouting is for every girl, everywhere, and is dedicated to serving members from all racial, ethnic, cultural, religious and socioeconomic groups; and

WHEREAS, Girl Scouts of Colorado is a statewide council serving 33,000 girls, ages 5 to 17, across the state; and

WHEREAS, the Frisco Town Council wishes to acknowledge the contributions to our community of the three Daisy, five Brownie, seven Junior, three Cadette, four Senior, and two Ambassador troops located in Summit County; and

WHEREAS, more than 3.3 million current Girl Scout members nationwide will be celebrating 107 years of an American tradition of teaching girls an innovative program to help them succeed;

NOW, THEREFORE, I, GARY WILKINSON, MAYOR OF THE TOWN OF FRISCO, COLORADO DO HEREBY OFFICIALLY PROCLAIM THE WEEK OF MARCH 10-16 AS GIRL SCOUT WEEK.

DATED THIS 12TH DAY OF MARCH, 2019.

TOWN OF FRISCO:

By: _____
Gary Wilkinson, Mayor

ATTEST:

By: _____
Deborah Wohlmuth, CMC, Town Clerk

**RECORD OF PROCEEDINGS
MINUTES OF THE REGULAR MEETING
OF THE TOWN COUNCIL OF THE TOWN OF FRISCO
FEBRUARY 26, 2019**

Mayor Wilkinson called the meeting to order at 7:00 p.m. Town Clerk Deborah Wohlmuth called the roll.

Present: Jessica Burley
Dan Fallon
Rick Ihnken
Hunter Mortensen
Deborah Shaner
Melissa Sherburne

Absent: Gary Wilkinson

Public Comment:

There was no public comment.

Council Comment:

There was no Council comment.

Consent Agenda:

Minutes February 12, 2019 Meeting
Warrant List
Purchasing Cards
Nomination of Kelsey Withrow to Ten Mile Basin Planning Commission
Resolution 19-10, Water Construction Standards

MOTION: COUNCIL MEMBER BURLEY MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. SECOND, COUNCIL MEMBER SHERBURNE VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	ABSENT
MORTENSEN	YEA	MOTION CARRIED.	

New Business:

Agenda Item #1: Resolution 19-11, Marina Dock System STAFF: TOM HOGEMAN 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Marina Manager Tom Hogeman stated that staff is requesting approval of a sole source purchase for a marina dock system from Meeco Sullivan as part of the Marina Master Plan

implementation. The Frisco Town Council has adopted the Marina Master Plan, including the lengthening and reconfiguring of the current walkway and a new fuel dock system. These changes are included in the improvements in Phase One of the master plan. Phase One construction is currently out to bid for a general contractor at this time with proposals due March 11, 2019. A general contractor will not be responsible for such dock purchases because this is a specialized field with the docks being made off-site, to Frisco Bay Marina specs, and then built and delivered by a specific dock company. Different companies have different structural designs and connection methods that would make connecting to the existing docks difficult. Nearly 90% of the docks at the marina were supplied by Meeco Sullivan. The new dock sections will need to fit together with the old sections to create one safe and seamless walkway. Purchasing the new dock sections from the same manufacturer of the current docks will ensure compatibility and ease of construction. Their quote of \$513,281 is fair and competitive within the industry. Council directed staff to bring this item back under consent to the next meeting including a contract with a final dollar amount. Mayor Wilkinson opened the public hearing at 7:02 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:14 p.m.

MOTION: COUNCIL MEMBER IHNKEN MOVED TO TABLE RESOLUTION 19-11, BURLEY SECOND, COUNCIL MEMBER BURLEY. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	ABSENT
MORTENSEN	YEA	MOTION CARRIED.	

Agenda Item #2: Colorado Communities for Climate Action Request for Support STAFF: NANCY KERRY 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Town Manager Nancy Kerry indicated that CC4CA requests the Town Council's support of four policy CC4CA advocacy statements: Create new task forces, staffed positions, programs and initiatives, and/or other entities to support and improve solid waste diversion efforts in the state and to improve funding and technical assistance for such efforts; Create new task forces, staffed positions, and/or statewide initiatives to support the expansion of recycling business in Colorado; Allow local governments to regulate disposal plastic waste; and require or incentivize state agencies to improve their recycling, composting, and other solid waste reduction efforts. Mayor Wilkinson opened the public hearing at 7:21p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:22 p.m.

MOTION: COUNCIL MEMBER SHERBURNE MOVED TO PROVIDE DIRECTION TO THE TOWN MANAGER TO INDICATE TO CC4A THAT THE TOWN OF FRISCO SUPPORTS THE FOUR POLICY ADVOCACY STATEMENTS. SECOND, COUNCIL MEMBER BURLEY. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	ABSENT
MORTENSEN	YEA	MOTION CARRIED.	

Old Business:

Agenda Item #3: Second Reading, Ordinance 19-03, an Ordinance Amending Chapter 87 of the Code of Ordinances of the Town of Frisco, Concerning Excavations, by Amending Sections 87-5, Concerning Fees and Bonds; 87-6, Concerning Time and Area Limitations for Street Obstructions; 87-7 Concerning Performance Requirements; 87-8, Concerning Safety Measures; 87-10, Concerning Cuts and Backfill; 87-14 Concerning the Duty to Inform the Town Manager; 87-15, Concerning Conditions for the Issuance of Permits; and 87-19, Concerning Emergencies
STAFF: ADDISON CANINO 1) MAYOR OPENS PUBLIC HEARING 2) STAFF REPORT 3) PUBLIC COMMENTS 4) MAYOR CLOSES PUBLIC HEARING 5) COUNCIL DISCUSSION 6) MOTION MADE 7) MOTION SECONDED 8) DISCUSSION ON MOTION 9) QUESTION CALLED

Assistant Public Works Director Addison Canino stated that the Town is required to review and update, if needed, various Town documents, standards and Ordinances every five years. Changes concern fees and bonds, time and area limitations for street obstructions, performance requirements, safety measures, cuts and backfill, duty to inform the Town Manager, conditions for issuance of permits, and concerning emergencies. Mayor Wilkinson opened the public hearing at 7:24 p.m. There being no public comment, Mayor Wilkinson closed the public hearing at 7:25 p.m.

MOTION: COUNCIL MEMBER FALLON MOVED TO APPROVE ON SECOND READING, ORDINANCE 19-03, AN ORDINANCE AMENDING CHAPTER 87 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, CONCERNING EXCAVATIONS, BY AMENDING SECTIONS 87-5, CONCERNING FEES AND BONDS; 87-6, CONCERNING TIME AND AREA LIMITATIONS FOR STREET OBSTRUCTIONS; 87-7 CONCERNING PERFORMANCE REQUIREMENTS; 87-8, CONCERNING SAFETY MEASURES; 87-10, CONCERNING CUTS AND BACKFILL; 87-14 CONCERNING THE DUTY TO INFORM THE TOWN MANAGER; 87-15, CONCERNING CONDITIONS FOR THE ISSUANCE OF PERMITS; AND 87-19, CONCERNING EMERGENCIES. SECOND, COUNCIL MEMBER IHNKEN. VOTE:

BURLEY	YEA	SHANER	YEA
FALLON	YEA	SHERBURNE	YEA
IHNKEN	YEA	WILKINSON	ABSENT
MORTENSEN	YEA	MOTION CARRIED.	

Adjourn:

There being no further business, the meeting adjourned at 7:26 p.m.

Respectfully Submitted,

Deborah Wohlmuth, CMC
Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: TOWN COUNCIL
FROM: DEBORAH WOHLMUTH, TOWN CLERK
RE: CHARTER REVIEW OF CHAPTER 127, OFFENSES
DATE: MARCH 12, 2019

Summary: Per the Town of Frisco Home Rule Charter, every five years, each Chapter of the Frisco Town Code is to be reviewed for possible amendment or repeal.

Background: Chapter 127, Offenses, was added to the Code of the Town of Frisco on August 27, 1979 by Ordinance 79-20. Amendments have occurred to this chapter in 1982, 1990, 1991, 1993, 2001, 2004, 2006, 2007, 2008, 2012, 2013, 2014, 2015, 2016, and 2018. Per the Home Rule Charter, staff has reviewed Chapter 127 and determined there are no amendments necessary at this time. Chapter 27, Offenses, is in the council packet for your review.

Staff Recommendation: On that basis, it is my

RECOMMENDATION

that the Council

make a motion acknowledging that Chapter 127, Offenses has been reviewed pursuant to the Home Rule Charter and that no changes are necessary at this time.

Reviews and Approvals: This report has been reviewed and approved by:

Tom Wickman, Police Chief
Nancy Kerry, Town Manager

OFFENSES

Chapter 127

OFFENSES

- §127-1. Harassment.
- §127-2. Disturbance of Peace.
- §127-3. (Reserved)
- §127-4. Discharge of Weapons.
- §127-5. Urination and Defecation in Public.
- §127-6. Obstruction of Public Way.
- §127-7. Public Consumption of an Alcohol Beverage and Possession of an Open Container of an Alcohol Beverage.
- §127-8. Report of Disorderly Conduct by Liquor Licensees.
- §127-9. (Reserved)
- §127-10. Injury or Destruction of Public or Private Property.
- §127-11. Open Fires and Fireworks
- §127-12. - 127-15. (Reserved)
- §127-16. Littering on Public or Private Property.
- § 127-17. Receptacles Required – Placement and Removal of Garbage Cans and Receptacles
- §127-18. Vehicles Injurious to Pavement.
- §127-19. Trespassing.
- §127-20. - 127-23. (Reserved)
- §127-24. (Reserved)
- §127-25. (Reserved)
- §127-26. Interference with Person with Police Authority.
- §127-27. - 127-36. (Reserved)
- §127-37. (Reserved)
- §127-38. Operation of Snow Removal Equipment by Private Operators.
- §127-39. Construction of Obstructions on Town Right-of-Way Prohibited.
- §127-40. Idling of Motor Vehicles.
- §127-41. Legislative Intent.
- §127-42. Definitions.
- § 127-43. General Smoking Restrictions.
- § 127-44. Exceptions to Smoking Restrictions.
- § 127-45. Optional Prohibitions.
- § 127-46. Other Applicable Regulations of Smoking.
- § 127-47. Unlawful Acts – Penalty – Disposition of Fines and Surcharges.
- §127-48.-49. (Reserved)
- § 127-50. Open and Public Consumption of Marijuana Prohibited.
- § 127-51. Panhandling and Solicitation.
- § 127-52. Unmanned Aircraft Systems
- § 127-53. Noise

[HISTORY: Adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 08-27-79, Ord. 79-20. Section 127-37 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

OFFENSES

GENERAL REFERENCES

Alcoholic Beverages—See Ch. 53.

Dogs—See Ch. 79.

Excavations—See Ch. 87.

Nuisances—See Ch. 124.

Snowmobiles—See Ch. 153.

§ 127-1. Harassment. [Added 11-23-04, Ord. 04-19]

- A. It shall be unlawful to commit harassment. A person commits harassment if, with intent to harass, threaten or abuse another person, that person:
1. Strikes, shoves, kicks, or otherwise touches a person or directly or indirectly subjects him or her to harmful, painful or offensive contact;
 2. In a public place directs obscene language or makes an obscene gesture to or at another person;
 3. Follows a person in or about a public place;
 4. Initiates communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily harm or property damage or makes any comment, request, suggestion, or proposal by telephone that is obscene;
 5. Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
 6. Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response;
 7. Delivers or causes delivery of written, printed, or graphic material or any object that threatens bodily injury or property damage to or against another person; or
 8. Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property.
- B. As used in this section, unless the context otherwise requires, the term "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether the ultimate sexual acts are normal or perverted, actual or simulated, including but not limited to masturbation, cunnilingus, fellatio, anilingus, or excretory functions. Any act prohibited by subsection A. (5) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.¹

¹Editor's Note: Former § 127-1, Assault and battery, was deleted 2-5-91, Ord. 91-1.

OFFENSES

§ 127-2. Disturbance of Peace. [Amended 02-05-91, Ord. 91-01]

It shall be unlawful for any person to disturb the peace of another by violence, offensive or unruly conduct, loud or unusual noises or use of any language calculated to provoke a disturbance of the peace; or for any person to permit any such disturbance of the peace upon any premises owned or possessed by that person or under his management or control, when within his power to prevent, so that others in the vicinity are or may be disturbed thereby.

§ 127-3. (Reserved)²

§ 127-4. Discharge of Weapons

It shall be unlawful for any person, other than a law enforcement officer acting in the line of duty, to discharge or cause to be discharged any firearm within or into the limits of the town. Notwithstanding the foregoing, the Town Manager is authorized to approve the use and discharge of firearms on public property for biathlon events conducted under the auspices of the Colorado Biathlon Club or military salutes during funeral services. During such events, the discharge of firearms may occur only at those locations specifically authorized by the Town Manager. It shall be unlawful for any person (s) participating in a biathlon event or gun salute to discharge any firearm anywhere within or into the limits of the town other than on the property specifically permitted by the Town Manager for such event. For biathlon events, the Town Manager shall cause such property to be posted "Area Closed Due to Firearms Discharged for Biathlon Event" and prior to each biathlon event, a permit for the use of the public land must be approved by the Town Manager.

§ 127-5. Urination and Defecation in Public. [Amended 11-23-04, Ord. 04-19]

It is unlawful for any person to urinate or defecate on any public or private property unless into a receptacle that has been provided for that purpose that stores or disposes the wastes in a sanitary manner and that is enclosed from the view of the general public.³

§ 127-6. Obstruction of Public Way. [Amended 02-16-82, Ord. 82-03; 02-05-91, Ord. 91-01]

It shall be unlawful for any person to be upon any public way or public place in such a manner as to interfere with the free and unobstructed use of such public way or public place by any other person or persons.

§ 127-7. Public Consumption of an Alcohol Beverage and Possession of an Open Container of an Alcohol Beverage. [Amended 11-23-04, Ord. 04-19; 01-08-19, Ord. 18-16]

- A. It shall be unlawful for any person to consume any alcohol beverage in any public place except on a licensed premises permitted by the Town of Frisco Liquor Licensing Authority and in accordance with the Colorado Liquor Code, Colorado Revised Statutes section 44-3-101 et seq., as presently enacted or as may subsequently be enacted; provided, however, that it shall not be unlawful for a person who is at least twenty-one (21) years of age to

²Editor's Note: Former § 127-3, Drunk and disorderly conduct, 127-4, Assembling to commit unlawful act, and 127-5 Disturbance of religious worship, were repealed 2-5-91, Ord. 91-1.

³Editor's Note: Former § 127-3, Drunk and disorderly conduct, 127-4, Assembling to commit unlawful act, and 127-5 Disturbance of religious worship, were repealed 2-5-91 by Ord. No 91-1.

OFFENSES

consume an alcohol beverage while such person is a passenger aboard a luxury limousine, as defined in 40-10.1-301(7), Colorado Revised Statutes, or a charter or scenic bus, as defined in section 40-10.1-301(2)), Colorado Revised Statutes.

- B. It shall be unlawful for any person to possess, or have under his or her control, in any public place except on a licensed premises permitted by the Town of Frisco Liquor Licensing Authority and in accordance with the Colorado Liquor Code, Colorado Revised Statutes section 44-3-101 et seq., as presently enacted or as may subsequently be enacted, any alcohol beverage in a container of any kind or description which is not sealed or upon which the seal is broken. As used in this section, the word “sealed” means the regular seal applied to alcohol beverage containers pursuant to applicable federal and/or state law. Notwithstanding the provisions of this subsection, it shall not be unlawful for a person who is at least twenty-one years of age to: (i) possess, or have under his or her control, an unsealed container of any alcohol beverage while such person is a passenger aboard a luxury limousine, as defined in section 40-10.1-301(7), Colorado Revised Statutes, as amended, or a charter or scenic bus, as defined in section 40-10.1-301(2), Colorado Revised Statutes, as amended; and (ii) possess, or have under his or her control, an unsealed container of any alcohol beverage if such unsealed container is located in a locked trunk or other locked compartment of a motor vehicle that is not readily accessible by the driver or passengers of the motor vehicle.
- C. As used in this section, the terms “alcohol beverage” shall be defined as set forth in section 44-3-103, Colorado Revised Statutes, as amended, provided, however, that such terms shall not include any “fermented malt beverage” as defined in section 44-4-103, Colorado Revised Statutes, as amended. As used in this section, the terms “public place” shall include, without limitation, any place that is in or upon any public street, alley, sidewalk, parking lot, building, park or open space or within any vehicle that is in or upon any public street, alley, sidewalk, parking lot, park or open space, and, in addition, shall include any place that is in or upon those portions of any private property upon which the public has an express or implied license to enter or remain, or within any vehicle that is in or upon those portions of any private property upon which the public has an express or implied license to enter or remain.

§ 127-8. Report of Disorderly Conduct by Liquor Licensees. [Amended 11-23-04, Ord. 04-19]

It shall be unlawful for any person who is the holder of a fermented malt beverage, malt, vinous, or spirituous liquor license, or for any manager or employee of such license holder, to knowingly fail to immediately report to the Frisco Police Department any disturbance of the peace or any other criminal activity occurring on or within the licensed premises.

§127-9. (Reserved)⁴

⁴Editor's Note: Former § 127-7, Unlawful acts around schools, 127-8, Unlawful congregation, and 127-9, Injury or destruction of public property, were repealed 2-5-91 by Ord. No. 91-1.

OFFENSES

§ 127-10. Injury or Destruction of Public or Private Property. [Amended 02-05-91, Ord. 91-01]

It shall be unlawful for any person to willfully, maliciously, wantonly, negligently or in any manner injure or destroy real property or improvements thereto or moveable or personal property belonging to any person or business entity.

§127-11. Open Fires and Fireworks. [Added 06-26-07, Ord. 07-12; Amended 06-26-12, Ord. 12-05]

- A. If the Town Manager finds, based on competent evidence and after consultation with the Sheriff of Summit County, that there exists a significant threat of wildfires due to recent or anticipated weather conditions and/or forest conditions in Summit County, then he shall cause to be posted, at each location designated by resolution of the Town Council in January of each year for the posting of notices of Town Council meetings, a notice that states as follows:

PUBLIC NOTICE

TOWN OF FRISCO STAGE 1 OPEN FIRE AND FIREWORKS BAN IN EFFECT PURSUANT TO SECTION 127-11 OF THE CODE OF THE TOWN OF FRISCO

- B. If the Town Manager finds, based on competent evidence and after consultation with the Sheriff of Summit County, that there exists a significant and imminent threat of wildfires due to recent or anticipated weather conditions and/or forest conditions in Summit County, then he shall cause to be posted, at each location designated by resolution of the Town Council in January of each year for the posting of notices of Town Council meetings, a notice that states as follows:

PUBLIC NOTICE

TOWN OF FRISCO STAGE 2 OPEN FIRE AND FIREWORKS BAN IN EFFECT PURSUANT TO SECTION 127-11 OF THE CODE OF THE TOWN OF FRISCO

- C. At any time during which a Stage 1 notice is posted in accordance with subsection A above, it shall be unlawful to set, maintain, or allow the setting or maintenance of an Open Fire within the Town of Frisco, and, further, it shall be unlawful to sell or use Fireworks within the Town of Frisco. Notwithstanding the foregoing, the following types of Open Fire and Fireworks are permitted:
1. Fires contained within liquid-fueled or gas fueled stoves;
 2. Fires in fireplaces or stoves within all buildings;
 3. Charcoal fueled fires contained within grills and chimineas;
 4. Fires on private property within permanent fire pits, or within self-contained outdoor fire bowls or outdoor chimney units with screened covers placed on a concrete or asphalt surface, if:
 - a. Such contained fire is under constant supervision;

OFFENSES

- b. Adequate fires suppression apparatus is available at the location of the contained fire;
 5. Pre-approved public fireworks displays;
 6. Fires used to inflate and propel hot air balloons; and
 7. Fires authorized by the Town, a Fire Protection District, the United States Forest Service, or the Summit County Environmental Health Department pursuant to a properly issued permit.
- D. At any time during which a Stage 2 notice is posted in accordance with subsection B above, it shall be unlawful to:
1. Build, maintain, attend or use any outdoor fire, including but not limited to a campfire, or a fire in a charcoal grill, coal or wood burning stove including, without limitation, the use of any such fire, grill or stove within developed camping or picnic grounds;
 2. Dispose of any burning object outdoors, including without limitation, any cigarette, marijuana, cigar or match;
 3. Use or sell any fireworks, or to use any explosive requiring a fuse or blasting cap, including without limitation any rocket or exploding target;
 4. Operate a chainsaw without an approved spark arrestor, five (5) gallons of water, a "2A10BC" classified dry chemical fire extinguisher, and a round point shovel with an overall length of at least 36 inches at hand and ready for use; for purposes of this subsection, "at hand and ready for use" shall mean, with respect to the fire extinguisher, that the fire extinguisher is immediately available to the chainsaw operator at all times and, with respect to the water and shovel, that such items are readily accessible by the operator and may be obtained by the operator and brought to the site of operation within one minute;
 5. Weld or operate an acetylene or other torch with an open flame outdoors; or
 6. Inflate or propel a hot air balloon.
- E. The prohibition on fires that is set forth in subsection "D" above shall not include fires contained within (i) a liquid-fueled or gas-fueled stove, or (ii) a fireplace contained within a fully enclosed building. The prohibition on fireworks that is set forth in subsection "D" above shall not include commercial, professional and municipal fireworks displays that have received specific written approval from the Summit County Sheriff.
- F. For purposes of this Section, an "Open Fire" shall be defined as any outdoor fire, including but not limited to campfires, warming fires, bonfires, or the prescribed burning of fence rows, fields, wildlands, trash or debris.
- G. For purposes of this Section, "Fireworks" shall mean any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonations, including, without limitation, the following articles and

OFFENSES

devices commonly known and used as fireworks: toy cannons or toy canes in which explosives are used, blank cartridges, the type of balloon which requires fire underneath to propel the same, firecrackers, torpedoes, skyrockets, rockets, Roman candles, sparklers, fountains, Day-Glo bombs, cigarette loads and torches, or other fireworks of like construction, and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. "Fireworks" shall not include any toy caps that do not contain more than twenty-five hundredths of a grain of explosive compound per cap; trick matches, trick noisemakers, toy smoke devices and novelty auto alarms; or highway flares, railway fuses, ship distress signals, smoke candles and other emergency signal devices.

§ 127-12. - 127-15. (Reserved)⁵

§ 127-16. Littering on Public or Private Property. [Amended 02-05-91,Ord. 91-01]

- A. It shall be unlawful for any person to allow or to deposit, throw or leave any rubbish, waste material, refuse, garbage, trash, debris or other foreign substance on any public or private property or in any waters.
- B. It shall be unlawful for any person to deposit any rubbish, waste material, refuse, garbage, trash, debris or other foreign substance in any private dumpster, receptacle or container without permission of the owner or lessee.

§ 127-17. Receptacles Required – Placement and Removal of Garbage Cans and Receptacles [Added 02-12-08, Ord. 08-04]

- A. It shall be the duty of every person in charge of private real property to provide and keep one or more garbage cans in which all garbage shall be kept and to maintain and store such can(s) in accordance with the requirements of subsection B of this section.
- B. All garbage cans provided and kept in accordance with the requirements of subsection A of this section shall have a lid that prevents access to the contents of the can by birds and small animals. Except during those times when a garbage can is in immediate, active use for filling or emptying, the lid of the can shall be maintained in a completely closed position.
- C. Any person in charge of real property within the town that is served by curbside garbage pickup shall place a garbage can or similar refuse receptacle at the curb only on the day of pickup. After pickup, the garbage can or similar refuse receptacle must be removed from the curb and secured in accordance with subsection B of this section by not later than 10:00 p.m. on the day of pickup.
- D. Any other provision of this section notwithstanding, in the event that a person violates or fails to conform to any requirement of subsection C of this section during a week in which curbside garbage pickup is occurring on a day other than the normal, regularly scheduled pick up day for the subject location, this section shall be enforced only by the provision of a verbal or written warning by a law enforcement officer.

⁵Editor's Note: Former § 127-11, Damage to ditches, 127-12, Destruction of advertisements, 127-13, Throwing of posters and circulators on public places, 127 14, Circulars invoking violence and hostility, and 127-15, delivery of handbills and circulars restricted were repealed 2-5-91, Ord. 91-1.

OFFENSES

E. For purposes of this section, the terms “person in charge of private real property” shall mean and include any person owning or having or being entitled to possession or control of any private real property, leasehold, residence, building or premises, or any part thereof, within the town, including the agent or agents of such person. For purposes of this section, the term “garbage” shall mean all putrescible animal or vegetable matter resulting from the processing, preparation, cooking, serving, sale or storage of meats, fowl, fish, fruits or vegetables. For purposes of this section, a “can” shall mean a water-tight receptacle made of galvanized metal or other non-absorbant material.

§ 127-18. Vehicles Injurious to Pavement.

It shall be unlawful for any vehicle injurious to pavement to be permitted upon any public thoroughfare unless the operator of such vehicle shall first plank and protect such paved streets from damage.

§ 127-19. Trespassing. [Amended 02-05-91, Ord. 91-01]

It shall be unlawful for any person to enter upon the property of another without the consent of the owner, occupant or person in charge thereof.

§ 127-20. - 127-23. (Reserved)⁶

§ 127-24. (Reserved). [Amended 04-16-91, Ord. 91-08; 08-07-01, Ord. 01-16; Repealed 04-19, 11-23-04]

§ 127-25. (Reserved)⁷

§ 127-26. Interference with Person with Police Authority. [Amended 02-05-91, Ord. 91-01⁸]

It shall be unlawful for any person to resist any person duly empowered with the authority to enforce any ordinance or Charter provision of the town.

§ 127-27. - 127-36. (Reserved)⁹

§ 127-37. (Reserved)¹⁰

⁶Editor's Note: Former § 127-20. Weapons, 127-21, disposition of confiscated weapons, 127-22, Throwing of stones and missiles, and §127-23, Sale of weapons to intoxicated person or minors, were repealed 2-5-91, Ord. 91-1.

⁷Editor's Note: Former § 127-25, Indecent acts; filthy language, was repealed 2-5-91, Ord. 91-1.

⁸Editor's Note: This ordinance also repealed former Subsections B and C, which prohibited assisting or rescuing persons in the custody of the police and which subsections immediately followed this subsection.

⁹Editor's Note: Former §§ 127-27, Duty to aid law enforcement officer, 127-28, Impersonating an officer, 127-29, False fire alarm, 127-30, Wrongs to persons under age of eighteen, 127-31, Sale of beer to minors, 127-32, Possession of beer by minors, 127-33, False statements or documents by persons under twenty-one, 127-34, Unlawful use of services by minors, 127-35, Unlawful purchases by minors, and 127-36, Aiding and abetting, were repealed 2-5-91, Ord. 91-1.

¹⁰Editor's Note: Former § 127-37, Use of town logo, added 9-7-1982 by Ord. No. 82-12. which ordinance also redesignated former § 127-37, Violations and penalties, as § 127-50, was repealed 2-5-91, Ord. 91-1.

OFFENSES

§ 127-38. Operation of Snow Removal Equipment by Private Operators. [Amended 04-03-90, Ord. 90-06]

- A. It is the duty of the occupant, owner or tenant of any lot, tract or parcel of real estate, whether vacant or occupied, within the Town of Frisco to keep sidewalks continuous thereto reasonably free from accumulation of snow and ice and to remove the same with dispatch.
- B. It shall be unlawful for any person, business or corporation to push or deposit snow or ice upon any street, sidewalk, alley, right-of-way or other public property or any portion thereof.
- C. The Chief of Police or the Director of Public Works, or such other officer or employee as either may designate, may notify and require any person who violates or causes another to violate these provisions to remove such snow or ice within twenty-four (24) hours after being notified to do so.
- D. The person or persons responsible for any offense within the town shall be liable for and pay and bear all costs and expenses of the abatement of said offense.
- E. Snowplow operate shall not deposit snow in any area where such deposit would impede the vision of anyone driving a motor vehicle on a public street or right-of-way.
- F. Snowplow operators shall not deposit snow or ice on any other private property without the written permission of the property owner to which the snow will be deposited and approval from the town.
- G. Snowplow operators shall have proper lighting on the vehicle when they are engaged in plowing operations, i.e., headlights, taillights and any other safety lighting that is required by law.

§ 127-39. Construction of Obstructions on Town Right-of-Way Prohibited. [Added 04-03-90, Ord. 90-06]

- A. It is the duty of the occupant, as well as the owner, of any lot, tract or parcel of real estate, whether vacant or occupied, within the Town of Frisco to keep landscaping or any other obstruction of any kind out of the town right-of-way and on private property.
- B. It shall be unlawful for any person, business or corporation to construct or cause to be constructed any obstruction of any kind in town rights-of-way. This includes but is not limited to the following: fences, walls, trees or shrubs, irrigation systems, boulders or rock-type structures or any structure which prohibits the town from servicing its rights-of-way.
- C. The Chief of Police or the Director of Public Works, or such other officer or employee as either may designate, may notify and require any person who violates or causes another to violate these provisions to remove such obstruction from the right-of-way within twenty-four (24) hours after being notified to do so.
- D. The person or persons responsible for any offense within the town shall be liable for and pay and bear all costs and expenses of the abatement of said offense.

OFFENSES

- E. Each and every offense declared or defined by any ordinance of the town or otherwise is hereby prohibited, and the Chief of Police, Public Works Director and any other authorized representatives of the town are hereby authorized to cause the same to be summarily abated in such a manner as they may direct.
- F. These provisions shall also apply to all easement or use agreements between the Town of Frisco and any utility company, governmental entity or other parties having been granted the same, in writing, by the town.

§ 127-40. Idling of Motor Vehicles. [Added 03-02-93, Ord. 93-03]

- A. The unreasonable and prolonged idling of motors of any motor vehicle of any kind whatsoever is hereby declared to be a public safety and health hazard.
- B. It shall be unlawful for any person to idle or permit the idling of any motor vehicle of any kind whatsoever for more than fifteen (15) minutes within the limits of the Town of Frisco.
- C. The idling restriction of this section shall not apply to emergency vehicles; to vehicles engaged in traffic operations; to vehicles which are being serviced; to vehicles that must idle to operate auxiliary equipment, including but not limited to pumps, compressors, hydraulic equipment, and refrigeration units; or to idling vehicles stopped due to traffic congestion.
- D. Verification that a motor vehicle has idled for a period of fifteen (15) minutes or longer shall be prima facie evidence that said vehicle was idling for a prolonged and unreasonable period of time.

§ 127-41. Legislative Intent. [§127-41 - §127-29 repealed and replaced in their entirety 08-08-06, Ord. 06-25; Amended 01-14-14, Ord. 13-11]

The Town Council finds, determines and declares that it is in the best interest of the people of this Town to protect nonsmokers from involuntary exposure to environmental smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment. Therefore, the Town council hereby declares that the purpose of Sections 127-42 through 127-47 is to preserve and improve the health, comfort, and environment of the people of this Town by limiting exposure to environmental smoke.

§ 127-42. Definitions. [Amended 01-14-14, Ord. 13-11; 02-10-15, Ord. 15-01]

The following words, terms and phrases, when used in Sections 127-41 through 127-47 of this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Auditorium means the part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

Bar means any indoor area that is operated and licensed under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

OFFENSES

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand dollars (\$50,000) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income or fifty thousand dollars (\$50,000) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a “cigar-tobacco bar” and shall not thereafter be included in the definition regardless of sales figures.

Employee means any person who:

1. Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or
2. Provides uncompensated work or services to a business or nonprofit entity.

Employee includes every person described in paragraph (a) of this subsection (5), regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.

Employer means any person, partnership, association, corporation, or nonprofit entity that employs one (1) or more persons. *Employer* includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission or agency; or any other separate corporate instrumentality or unit of state or local government.

Environmental smoke or secondhand smoke means gases, particles and vapors released into the air as a result of the combustion, electrical ignition, vaporization or heating of any substance, including but not limited to tobacco, nicotine or a marijuana product, also known as “sidestream smoke,” and such gases, particles and vapors that are exhaled by the smoker.

Food service establishment means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.

Indoor area means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

Marijuana means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.

Place of employment means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

Public building means any building owned or operated by:

1. The state, including the legislative, executive, and judicial branches of state government;

OFFENSES

2. Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency of any of the same; or
3. Any other separate corporate instrumentality or unit of state or local government.

Public meeting means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S., or any other law of this state.

Smoke-free work area means an indoor area in a place of employment where smoking is prohibited under this Chapter.

Smoking means the burning, heating, electrical ignition or vaporization of a ~~lighted~~ cigarette, cigar, pipe, or any other similar product, device, matter or substance that contains tobacco, nicotine, or marijuana, or any other substance or combination thereof, and the inhaling and exhaling of environmental smoke created thereby.

Tobacco means cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

Tobacco Business means a sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

Work area means an area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

§ 127-43. General Smoking Restrictions. [Amended 01-14-14, Ord. 13-11]

- A. Except as provided in Section 127-44, and in order to reduce the levels of exposure to environmental smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:
 1. Public meeting places;
 2. Elevators;
 3. Government-owned or operated means of mass transportation, including, but not limited to, buses, vans, and trains;
 4. Taxicabs and limousines;
 5. Grocery stores;

OFFENSES

6. Gymnasiums;
7. Jury waiting and deliberation rooms;
8. Courtrooms;
9. Child day care facilities;
10. Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
11. (I) Any place of employment that is not exempted.

(II) In the case of employers who own facilities otherwise exempted from this Chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.
12. Food service establishments;
13. Bars;
14. Limited gaming facilities and any other facilities in which any gaming or gambling activity is conducted;
15. Indoor sports arenas;
16. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
17. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;
18. Bowling alleys;
19. Billiard or pool halls;
20. Facilities in which games of chance are conducted;
21. The common areas of retirements facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
22. Public buildings;
23. Auditoria;
24. Theatres;

OFFENSES

25. Museums;

26. Libraries;

27. To the extent not otherwise provided in Section 25-14-103.5, C.R.S., public and nonpublic schools; and

28. Other educational and vocational institutions

- B. A cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005. A cigar-tobacco bar shall display signage in at least one (1) conspicuous place and at least four inches (4") by six inches (6") in size stating: "Smoking Allowed. Children under eighteen (18) years of age must be accompanied by a parent or guardian."

§ 127-44. Exceptions to Smoking Restrictions.

Section 127-43 of this Chapter shall not apply to:

- A. Private homes, private residences, and private automobiles; except that Section 127-43 of this Chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation.
- B. Limousines under private hire;
- C. A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%);
- D. Any retail tobacco business;
- E. A cigar-tobacco bar;
- F. The outdoor area of any business;
- G. A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees;
- H. A private nonresidential building on a farm or ranch, as defined in Section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars (\$500,000); or
- I. The retail floor plan, as defined in Section 12-47.1-509, C.R.S., of a licensed casino.

§ 127-45. Optional Prohibitions.

- A. The owner or manager of any place not specifically listed in Section 127-43, including a place otherwise exempted under Section 127-44, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Chapter.

OFFENSES

- B. If the owner or manager of a place not specifically listed in Section 127-43, including a place otherwise exempted under Section 127-44, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by Section 127-43(A) (11) (II), the owner or manager shall post a sign or signs in the smoke-free work area as provided in subsection A of this Section.

§ 127-46. Other Applicable Regulations of Smoking.

This Chapter shall not be construed to permit smoking where it is otherwise restricted by any other applicable law.

§ 127-47. Unlawful Acts – Penalty – Disposition of Fines and Surcharges.

- A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premise subject to Sections 127-41 through 127-47 of this Chapter to violate any provision of said sections of this Chapter.
- B. It is unlawful for a person to smoke in an area where smoking is prohibited pursuant to this Chapter.
- C. A person who violates any provision of Section 127-41 through 127-47 of this Chapter is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars (\$200) for a first violation within a calendar year, a fine not to exceed three hundred dollars (\$300) for a second violation within a calendar year, and a fine not to exceed five hundred dollars (\$500) for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.
- D. All judges, clerks of a court of record, or other officers imposing or receiving fines collected pursuant to or as a result of a conviction of any persons for a violation of any provision of Section 127-41 through 127-47 of this Chapter shall transmit all such moneys so collected in the following manner: Seventy-five percent (75%) of any such fine for a violation occurring within the corporate limits of the Town shall be transmitted to the treasurer of the Town and the remaining twenty-five percent (25%) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

§ 127-48. (Reserved)

§ 127-49. (Reserved)

§ 127-50. Open and Public Consumption of Marijuana Prohibited.

It is unlawful for any person to openly and publicly use, consume or smoke marijuana or to permit the same to occur on property owned or controlled by such person. For purposes of this Section:

- A. *Openly* means occurring or existing in a manner that is capable of visual observation;
- B. *Publicly* means occurring or existing in a place owned or controlled by a public entity or to which the public or a substantial number of the public has access, including but not limited to

OFFENSES

public buildings and facilities; the common areas of private buildings and facilities to which the public has access, such as lobbies, entryways, hallways, shared yards and courtyards; parks; playgrounds; streets; highways; sidewalks; transportation facilities; places of amusement; stores; restaurants; bars; service establishments; and clubs to which any adult member of the public can gain access, whether through membership or otherwise; and

C. *Marijuana* has the meaning set forth in Section 127-42 of this Chapter.

§ 127-51. Panhandling and Solicitation [Added 07-28-15, Ord. 15-05, Amended 12-08-15, Ord. 15-10]

A. Legislative Findings. The Town Council finds that the solicitation of occupants of vehicles traveling upon any street or highway presents significant risk of harm to persons and property, and causes delays and dangerous interference with pedestrian and motor vehicle traffic flows.

B. Definitions: For the purpose of this section, the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed:

Aggressive Panhandling means:

1. Intentionally touching or causing physical contact with another person without that person's consent in the course of soliciting; or
2. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including but not limited to unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact in the course of soliciting; or
3. Using violent or threatening gestures toward a person solicited; or
4. Using profane or abusive language which is likely to provoke an immediate violent reaction from the person being solicited; or
5. Approaching or following a person for solicitation as part of a group of two (2) or more persons, in a manner and with conduct, words, or gestures intended or likely to cause a reasonable person to fear imminent bodily harm or damage to or loss of property or otherwise to be intimidated into giving money or other thing of value.

Public Place: A place to which the public or a substantial group of persons has access, including, but not limited to, any street, sidewalk, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or playground.

Soliciting or Panhandling: For purposes of this section are interchangeable and mean any solicitation made in person requesting an immediate donation of money. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this section. Panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

OFFENSES

Traveled Portion of a Street or Highway: That portion of a road normally used by moving motor vehicle traffic.

A. Prohibited Acts

1. No person shall engage in aggressive panhandling in any public place.
2. No person shall panhandle on private or residential property after having been asked to leave or refrain from panhandling by the owner or other person lawfully in possession of such property.
3. No person shall panhandle from the occupant of any vehicle located on the traveled portion of a street or highway when such panhandling:
 - a. causes the person performing the activity to enter onto the traveled portion of a street or highway; or
 - b. involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel; or
 - c. involves the person performing the activity to be located such that, or the person conducts the activity such that, vehicles cannot move into a legal parking area to conduct the transaction.

Provided, however, that it shall not be a violation of this subsection 3 for such activity to be conducted exclusively upon a public sidewalk, provided that none of the conditions described in subsections 3a. b. or c. are present or caused to occur.

B. Penalties: Every person convicted of a violation of this section shall be punished as provided in section 1-14 of this code.

C. Construction of Ordinance:

1. This section is not intended to proscribe any demand for payment for services rendered or goods delivered.
2. This section should be held inapplicable in any case where its application would be unconstitutional under the constitution of the state of Colorado or the constitution of the United States of America.

§ 127-52. Unmanned Aircraft Systems [Added 4-12-16, Ord. 16-02]

A. Purpose and intent. The purpose of this Section is to establish regulations pertaining to any unmanned aircraft system operating within the jurisdictional borders of the Town of Frisco. It is the intent of this Section to be interpreted in conformance with any existing or future federal or state laws or regulations that address the operation of unmanned aircraft systems.

B. Definitions. As used in this Article, the following terms shall have the meanings indicated:

OFFENSES

Aircraft means any contrivance invented, used, or designed to navigate or fly in the air.

Model Aircraft means an unmanned aircraft that is: (1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes.

Operate means to fly, use, launch, land, employ or navigate an unmanned aircraft system through the air.

Hobby Operator means an individual or entity operating an unmanned aircraft system for strictly recreational or hobby use; without limiting the foregoing, a Hobby Operator does not include any local, state or federal government agency lawfully operating unmanned aircraft systems for a government purpose or function, or any commercial operator authorized by the Federal Aviation Administration ("FAA") to operate a UAS, as evidenced by a valid certificate of authorization or exemption issued by the FAA.

Town Airspace means and includes all airspace above the jurisdictional boundaries of the Town of Frisco, to the full extent such airspace can legally be regulated by the Town.

Unmanned aircraft system or UAS means an aircraft, powered aerial vehicle, or other device without a human pilot on board, the flight of which is controlled either autonomously by on board computers or by remote control of a pilot operator on the ground or in another vehicle or aircraft, and all associated equipment and apparatus. It includes model aircrafts and drones.

- C. Operating requirements and limitations. Each person operating an UAS in Town Airspace shall comply with the following operating regulations:
1. An UAS operated by a Hobby Operator must weigh no more than sixteen (16) pounds at the time of operation, inclusive of equipment, payload and fuel.
 2. A Hobby Operator must have a visual line of sight of the UAS at all times. Visual line of sight means the UAS must be visible at all times to the operator, using his or her own natural vision to observe the UAS, including the use of standard eyeglasses or contact lenses.
 3. Without express prior written authorization from the Town Manager or his or her designee, no person may operate a UAS on or over any Town property including but not limited to public streets, alleys, paths, trails, playgrounds, parks, open space, parking lots, and public buildings. The Town Manager may provide such written authorization only for: (1) public purposes, including but not limited to public land management, wildlife management, search and rescue, and public safety; (2) purposes of commercial photography or videography; and (3) special events sponsored and managed onsite by a club, school, educational or other association. The Town Manager may impose reasonable conditions on any such authorization that are intended to promote public safety, including but not limited to requirements for public liability insurance.

OFFENSES

4. No person shall enter, hover, launch, or land an unmanned aircraft system on or over another person's property without the prior consent of the property owner. Such unauthorized entry onto another's property shall be deemed a trespass.
5. No person shall operate a UAS in a reckless or careless manner so as to endanger or cause reasonable risk of harm or actual harm to persons, property, or any domestic animal.

§ 127-53. Noise [Added 10-09-18, Ord. 18-09]

- A. Purpose. The purpose of this section 127-53 is to protect, preserve and promote the health, safety, welfare, peace and quiet of the citizens of the Town of Frisco through the reduction, control and prevention of loud and potentially harmful noise. Unless specified within this section 53, the restrictions contained in the following sections are not to be construed as repealing any other noise related ordinances in this code.
- B. Definitions. As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

Ambient Noise Level: the sound level of all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.

Commercial Establishment: a retail trade or service place of business, an office, a restaurant or a liquor licensed establishment, or any combination thereof.

Commercial Noise Zone: that portion of the town of Frisco indicated as the "commercial noise zone" in the map set forth in subsection N of this section.

Construction Noise: any noise created by or in connection with any activity for which a building, excavation or grading permit is required, or by or in connection with any other activity which requires the use of hand or power tools or other machinery used for building.

DBA: the sound level in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, publication S1.4-1971, including successor publications.

Decibel: a unit used to express the magnitude of a change in sound level. The difference in decibels between two (2) sound pressure levels is twenty (20) times the common logarithm of their ratio. In sound pressure measurements sound levels are defined as twenty (20) times the common logarithm of the ratio of that sound pressure level to a referenced level of $2 \times 10^{-5} \text{ N/m}^2$ (Newton's/meter squared). As an example of the effect of the formula, a three (3) decibel change is a one hundred percent (100%) increase or decrease in the sound level, and a ten (10) decibel change is a one thousand percent (1,000%) increase or decrease in the sound level.

Device: any mechanism which is intended to, or which actually produces, audible sound when operated or handled.

Emergency Vehicle: a vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

OFFENSES

Emergency Work: work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.

Exterior Loudspeaker or Amplifier: A device for the amplification of sound which: a) is located on an exterior deck, patio or balcony of any structure, b) is affixed to the exterior wall of any structure, c) is located in or on any lawn or landscaped area outside of any structure, or d) is otherwise placed, affixed or located outside the exterior walls of any structure.

Liquor Licensed Establishment: an establishment for which a license has been issued under the Colorado beer code, the Colorado liquor code or for which a special events alcoholic beverage license has been issued.

Noise: any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

Noise Source: any equipment, facility or device capable of emitting sound beyond the property boundary of the property on which it is located.

Person: any individual, firm, association, organization, partnership, business, trust, corporation, company, limited liability entity, contractor, supplier, installer, user, owner or operator, including any municipal corporation or its officers or employees.

Public Space: any real property or structure on real property owned by a governmental entity and normally accessible to the public, including, but not limited to, parks and other recreational areas.

Real Property Boundary: an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person or a public right of way boundary.

Residential Noise Zone: that portion of the town of Frisco indicated as the "residential noise zone" in the map set forth in subsection N of this section. Unless otherwise determined by the Town Council, any real property annexed to the town after the effective date of this section shall be located in the town's residential noise zone even though not indicated on the noise zone map.

Noise Zones: the portions of the town which are defined as the "commercial noise zone" and the "residential noise zone" in this subsection.

C. Noise Measurement. For purposes of determining and classifying any noise under this chapter, the following requirements shall be applied:

1. All noise within the town shall be measured at the approximate property boundary of the affected property. No minor variation from the requirements of this subsection shall affect the validity of a noise measurement.

OFFENSES

2. The noise shall be measured on the A-weighted scale set on “slow” mode using a sound level meter having characteristics defined by the American National Standards Institute. A sound measurement taken with a sound level meter shall be taken in accordance with the manufacturer’s recommendations.
 3. In all sound level measurements, consideration shall be given to the effect of the ambient noise level at the time and place of such sound level measurement.
- E. **Maximum Permissible Noise Levels.** No person or group of persons shall create or cause to be created any sound that at the point of measurement exceeds the maximum permissible sound level for the noise zone of the affected property. The sound shall be measured in accordance with the requirements of subsection C, Noise Measurement, of this section. When a noise source can be identified and its noise measured in more than one of the noise zones, the limits of the most restrictive noise zone shall apply at the boundaries between the different noise zones.

MAXIMUM PERMISSIBLE NOISE LEVELS

Commercial Noise Zone	7:00 A.M. To Next 11:00 P.M.	11:00 P.M. To Next 7:00 A.M.
	70 Decibels	65 Decibels
Residential Noise Zone	7:00 A.M. To Next 10:00 P.M.	10:00 P.M. To Next 7:00 A.M.
	55 Decibels	50 Decibels

- F. **Exterior Loudspeakers or Amplifiers.** It shall be unlawful for any person to use or operate or permit to be used or operated, an exterior loudspeaker or amplifier to emit amplified music at or from a commercial establishment anywhere within the town under any of the following circumstances:
1. At or from a location other than an exterior deck, patio or balcony of a restaurant or liquor licensed establishment;
 2. Between the hours of ten o'clock (10:00) P.M. of one day and seven o'clock (7:00) A.M. of the following day;
 3. When the deck or patio of the restaurant or liquor licensed establishment at which such speaker is located is not open for public use; or
 4. When the use or operation of such exterior loudspeaker or amplifier creates a sound level in decibels which exceeds the limits set forth in subsection D, Maximum Permissible Noise Levels, of this section.
 5. At all times when an exterior loudspeaker or amplifier is used to emit amplified music from the deck or patio or balcony of a restaurant or liquor licensed establishment, the owner of the premises (if the premises is a restaurant) or the licensee thereof (if the premises is a liquor licensed establishment) shall designate one employee then on the premises to be responsible for complying with the requirements of this section. An

OFFENSES

employer is legally accountable for the conduct of such person's employees which occurs in the course and scope of such employment and which violates the provisions of this section.

- H. Radios, Musical Instruments and Similar Devices. It shall be unlawful for any person in a public space to use or operate a radio, stereo, tape player, compact disk player, musical instrument or similar device that produces or reproduces musical sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passersby.
- I. Construction Noise. Because construction noise is often loud and of prolonged duration, the provisions of subsection D of this section shall not apply to construction noise, and instead construction noise shall be regulated by the provisions of this subsection.
 - 1. There shall be no limit on construction noise between the hours of 7:00 A.M. and 7:00 P.M. on Monday through Saturday, except as provided in subsection G.ii, below, with respect to Sundays.
 - 2. It shall be unlawful for any person to cause or make construction noise between the hours of seven 7:00 P.M. one day and 7:00 A.M. of the next day, or at any time on a Sunday; provided, however, that it shall not be a violation of this section if construction noise is made or caused under any one of the following circumstances: (a) in connection with emergency work; or (b) in connection with a residential home improvement project conducted by the owner-occupant thereof between the hours of 9:00 A.M. and 7:00 P.M. on a Sunday.
- J. Use of Sound for Advertising. It shall be unlawful for any person to use or operate any loudspeaker or sound amplifying equipment, or any radio, stereo, tape player, compact disk player, musical instrument or similar device that produces or reproduces musical sound, for the purpose of commercial advertising or attracting the attention of the public to any person, place or structure for a commercial purpose.
- K. Exemptions. The following sounds, and sounds created by the described activities or at the described locations, shall be exempt from the provisions of this section:
 - 1. The use of property by the state of Colorado, any political subdivision of the state, including, but not limited to, the town. This exemption shall include all events staged on public property or private property used in conjunction with a public event, regardless of the sponsor of such event.
 - 2. Sound made in the plowing, shoveling, manufacturing, maintaining or grooming of snow, or made in the use of domestic power equipment on residential property.
 - 3. Sound made pursuant to a permit issued by the town manager in accordance with the provisions of subsection J of this chapter.

OFFENSES

4. Sound made by safety signals and warning devices; sound resulting from any emergency vehicle when responding to an emergency call or acting in time of emergency; and sound produced in connection with "emergency work" as defined in subsection B of this chapter.
 5. Sound emitted from houses of religious worship, ice cream trucks, or comparable use.
 6. Sound emitted from an emergency signaling device, including, but not limited to, a fire alarm, burglar alarm, or similar emergency signaling device, during a bona fide emergency.
 7. Sound resulting from reasonable activities conducted on public playgrounds and public or private school grounds, conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, playground use, athletic events and school entertainment events.
 8. Any noise which the town is prohibited from regulating under the federal noise control act, 42 USC sections 4916-17.
- L. Permit to Exceed Limits; Appeal.
1. Permit Application. Any person desiring to obtain a permit to exceed the noise levels designated in this section may make an application to the town manager. The town manager shall have the authority to grant a permit to exceed the maximum permissible noise levels designated in this chapter in accordance with the provisions of this section. In determining whether to grant a permit under this section, the town manager shall give consideration to: 1) the time of day that the noise is proposed to be created, 2) the duration of the proposed noise, 3) the loudness of the proposed noise relative to the required limits, 4) the potential impact of the noise on others in the vicinity of the noise source, 5) whether the proposed noise is temporary or continuous in nature, 6) the extensiveness of the proposed noise, and 7) the source of the noise and the reason the noise is needed or desired, and the technical and economic feasibility of bringing such proposed noise source into conformance with the provisions of this section. Fourteen (14) days prior to a decision, the town manager shall provide notice of such request to exceed noise limitations to property owners within 300 feet of the subject property where such noise will be generated. The town manager shall consider the comments provided and may prescribe any reasonable conditions or requirements on the permit which she deems necessary to minimize the adverse effects upon the community or the surrounding neighborhood, including, but not limited to, specific decibel limitations, limitations on time(s) and location(s) of the noise source, and equipment limitations or requirements. Any permit granted by the town manager under this section shall be effective only for the location and times designated within the permit, and shall be further subject to such conditions as may be set forth in such permit. There shall be no charge for an application submitted to the town manager under this section.
 2. An applicant for a permit under this section whose application has been denied or who disagrees with the conditions imposed upon such permit by the town manager may appeal such denial or imposition of conditions to the town council. A request for an appeal shall be submitted in writing to the town manager not later than seventy two (72)

OFFENSES

hours after the denial of the application or the granting of the permit containing the condition(s) to which the applicant objects. The request for appeal shall specify the grounds for the appeal. Such appeal shall be heard and decided by the town council at the next possible regular town council meeting following the submission of the request for appeal, considering the timing of the request in order to provide information about the request to the council in time. . In deciding an appeal, the town council shall consider only the factors set forth in subsection J.i. of this section.

M. Strict Liability. The violation of any provision of this chapter is a strict liability offense.

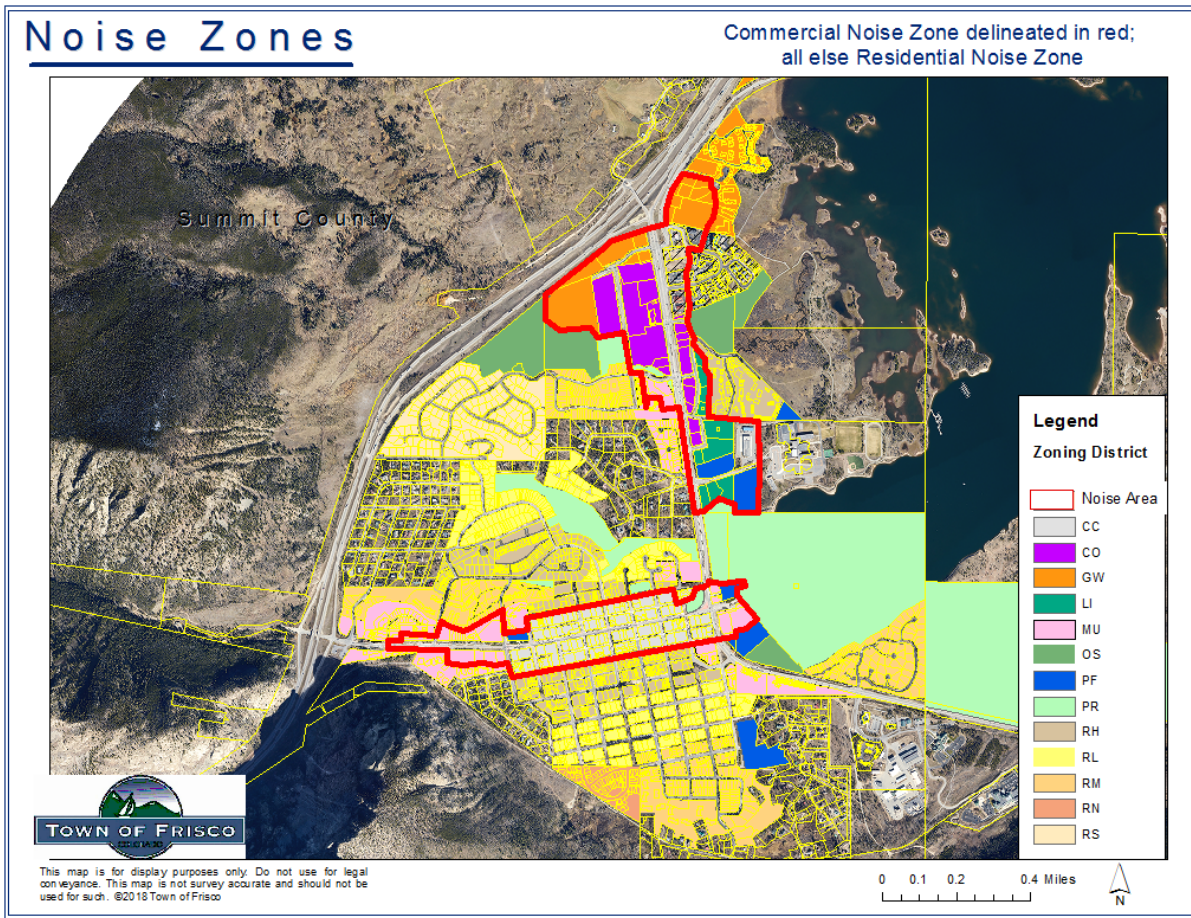
N. Enforcement.

1. The police chief shall have the primary responsibility for the enforcement of the noise regulations contained in this section. Nothing herein shall prevent the police chief from obtaining voluntary compliance by way of warning, notice or education.
2. If a person's conduct violates this section and consists of: (a) speech or communication; (b) a gathering with others to hear or observe speech or communication; or (c) a gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions, the person must be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation prior to arrest or a citation being issued.

O. Court Ordered Abatement. The violation of any provision of this section is declared to be a nuisance. In addition to other remedies available to the town, the town may commence an action pursuant to Chapter 124 of this Code to enjoin the violation of this section, or to authorize and compel the removal, termination or abatement of such violation.

OFFENSES

P. Noise Zone Map:





MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: JENN SHIMP, GUEST SERVICES MANAGER
RE: ISLAND GRILL CONCESSIONAIRE CONTRACT AND LEASE AGREEMENT FOR FOOD AND BEVERAGE SERVICES AT THE FRISCO BAY MARINA
DATE: MARCH 12, 2019

Summary: The food and beverage contract with the Island Grill at the Frisco Bay Marina expired in 2018. A new concessionaire agreement and license and a new lease agreement are attached for your review. The proposed agreement is for a seasonal term of May 28, 2019, to September 30, 2019, with five (5) successive one year renewal terms until September 30, 2024. The agreements can be terminated by either party provided notice is given prior to the end of the initial term or any renewal term. The agreements include verbiage to address the implementation of the Marina Master Plan and the construction of new facilities. Council may decide to solicit competitive bids for the food and beverage services at the time a new facility is proposed. The owners of the Island Grill are aware that Council may decide to solicit such competitive bids at a future date.

Background: In 2005, Council approved the Frisco Bay Marina Concessionaire Agreement with the Island Grill. The agreement set the terms and conditions under which the Island Grill was to operate as the seasonal food and beverage concessionaire for the Frisco Bay Marina. Concurrently, Council also approved a Lease Agreement with the Island Grill which provided the terms and conditions for use of the Town's property in connection with the food and beverage operation.

The Island Grill opened for business during the 2005 season while, at the time, the food and beverage building was still under construction. On April 10, 2007, the Town approved the First Amendment to the Frisco Marina Concessionaire Agreement and Lease. It amended the renewal provisions, operating fees and other requirements as a result of building construction delays. A Second Amendment was approved in 2008 to renew the term to September 30, 2013, extend the operating hours to include Memorial Day and re-allocate janitorial services costs. A third amendment was approved in 2013 to renew the term to September 30, 2018. The term of this agreement was for five (5) successive one year renewal terms.

Staff Analysis: The Island Grill is operated and managed by Bobby Kato and Doug Sakata. Since 2005, the Island Grill has cooperated with and participated in Town activities at the Marina and continues to meet all of the standards set forth in the Concessionaire and Lease Agreements. Their required reports and fees have been remitted to the Town in a timely

manner. The Island Grill offers weekly entertainment and changes their menu to continue to enhance the venue.

Mr. Kato and Mr. Sakata have a specialized understanding of the facility, an ability to operate the business in a professional and efficient manner, and a positive reputation in Frisco and Summit County. They are both a positive influence and contributor to the success of the Frisco Bay Marina.

The proposed amendment is for a seasonal term of May 28, 2019, to September 30, 2019, with additional five (5) successive one year renewal terms, until September 30, 2024. The terms of the agreement are consistent with the prior agreement that expired in 2018.

Recommendation: On that basis, staff recommends the Town Council approve the Frisco Bay Marina Island Grill Concessionaire Contract and Lease Agreement for Food and Beverage Services.

Financial Impact: Through the annual food and beverage concessionaire agreement between the Town and the Island Grill, the Town of Frisco received \$48,635 in revenue in 2016, \$53,391 in 2017, and \$50,660 in 2018. Concessionaire revenue for food and beverage service is budgeted in 2019 in line item 90-9000-3479 for the amount of \$45,000. The marina operates as an enterprise fund and revenues are generated to offset expenses. Approval of this concessionaire contract and lease agreement will help generate such budgeted revenues for 2019 and beyond.

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager/Recreation Director
Nancy Kerry, Town Manager – Approved
Bonnie Moinet, Finance Director - Approved

FRISCO BAY MARINA CONCESSIONAIRE AGREEMENT

This Frisco Marina Concessionaire Agreement and License (this “Agreement”) is made and entered into this 12th day of March, 2019, by and between The Island Grill, Inc., a Colorado corporation d/b/a The Island Grill, (“Concessionaire”) and the Town of Frisco, a Colorado home rule municipal corporation (“Frisco”).

WHEREAS, the Frisco Bay Marina (the “Marina”) is a facility proudly operated by Frisco pursuant to a special use permit (the “Permit”) from the Dillon Reservoir Recreation Committee (“DRReC”) and a lease (the “Denver Water Lease”) from the City and County of Denver acting by and through its Board of Water Commissioners (“Denver Water”); and

WHEREAS, Frisco operates the Marina, including the provision of boat slips and launching, trailer storage, marketing, winterizing and winter storage but wishes to contract out the provision of certain other services; and

WHEREAS, it is the goal of the Frisco Town Council to provide visitors and citizens with a quality food and beverage at the Marina; and

WHEREAS, Concessionaire provides food and beverage services and facilities.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, Concessionaire and Frisco hereby agree as follows:

1. Food and Beverage Services and Facilities Concessionaire shall have the right and obligation to provide food and beverage services and facilities to the public at the Marina (hereinafter the “Food and Beverage Operations” or the “Operations”), under the terms of this Agreement.

2. Service Standards. Concessionaire agrees that in conducting its Operations, it shall adhere to the following service standards adopted by the Frisco Town Council. Concessionaire shall:

(a) do nothing to jeopardize, and shall always act in compliance with, the Permit and the Denver Water Lease;

(b) operate in accordance with all applicable state and local government food service regulations, and in a professional manner and provide quality service and equipment to all users;

(c) ensure that the Operations are conducted in a timely manner, including but not limited to being open for business during posted operating hours, which operating hours shall include lunch and dinner/happy hour service seven days per week during the period of each year within the Term of this Agreement (defined in paragraph 6(c) below) in which the Marina is open for business, with such period generally being from the Saturday of Memorial Day weekend to September 7 of each year (such periods being described herein, respectively, as the “Summer of 2019 Operating Season,” the “Summer of 2020 Operating Season,” the “Summer of 2021 Operating Season,” the “Summer of 2022 Operating Season,” the “Summer of 2023 Operating Season,” and the “Summer of 2024 Operating Season,” and individually as an “Operating Season”);

(d) ensure that its employees provide courteous and friendly service to all patrons without regard to age, race, color, sex, sexual orientation, disability, religion or political affiliation;

(e) work cooperatively with and support Frisco and DRReC whenever appropriate with respect to mutually beneficial programs;

(f) maintain any portion of the Marina that it uses in a generally good appearance, keeping it clean, tidy and free of debris in order to project a professional image at all times and maintain all equipment in properly functioning order, and;

(g) abide by any parking restrictions at the Marina, both for concessionaire-owned vehicles and those vehicles belonging to customers of concessionaire, to allow for the orderly flow of traffic throughout the Marina; and

(h) uphold and support applicable programs and policies of Frisco, including the 2018 Frisco Bay Marina and Waterfront Park Master Plan, while serving as a representative of Frisco.

(i) maintain operating standards as written in this Agreement while understanding that substantial portions of the 2018 Frisco Bay Marina and Waterfront Park Master Plan will likely be implemented and, as such, the entire Marina, and various parts thereof, will be under construction during the Terms of this Agreement.

(i) uphold Town of Frisco's policies to operate sustainably, and utilize such equipment, standards, and materials to best reduce, reuse, and recycle all cutlery and related food service items.

These standards of service shall hereinafter be referred to as the "Service Standards".

3. Term, Possession and Interest. The term of this Agreement (the "Term of this Agreement") shall be from the date first written above to September 30th 2019. Thereafter the term of this agreement will be renewed for five (5) successive one year renewal terms unless, not less than 30 days prior to the end of the initial term or any renewal term, the Concessionaire or the Town provides written notice to the other party of its desire to terminate this Agreement, which notice shall cause this Agreement to terminate at the end of the then-current term or renewal term. The initial term of this Agreement together with any automatic renewal term of this Agreement is referred to herein as the "Term of this Agreement."

Concessionaire understands and agrees that, if it is determined by the Town Council that a new food and beverage service facility will be established at the Marina, either as a replacement or as a supplement to the facility provided for in this Agreement and in the Lease Agreement (as defined below), then the Town shall determine, in its sole discretion and in accordance with applicable law, whether to seek competitive proposals for the operation of some or all food and beverage service facilities within the Marina.

The portion of the Marina provided by Frisco for use by Concessionaire (the "Leased Premises") shall be as described in that certain Frisco Bay Marina Food and

Beverage Concessionaire Lease (the "Lease Agreement") Concessionaire shall not use the leased premises for any use or purpose other than as expressly provided in this Agreement or the Lease Agreement.

4. Payments by Concessionaire.

(a) Reporting Requirements.

(i) Before 5 p.m. on the first Monday of each month during the term of this Agreement, Concessionaire shall submit to the Town of Frisco's Finance Director a report of Concessionaire's gross revenues collected during the previous month from its Operations and any retail sales allowed under this Agreement ("Gross Revenues Collected"). Concessionaire shall include with each report a signed statement affirming the completeness and accuracy of such report. Such statement may be prepared and certified to be true and correct by Concessionaire's bookkeeper; provided, however, that if the Finance Director has a reasonable objection to the use of Concessionaire's bookkeeper to prepare such statement, Concessionaire will engage an independent certified public accountant or other qualified person acceptable to the Finance Director to prepare and certify such statement.

The Finance Director shall have the right at any time upon 15 days' written notice to audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to Gross Revenues Collected from operations at the Frisco Bay Marina. Concessionaire, on the 16th day after written notice of the request to audit, shall make all such documents available for examination at the main offices of the Town of Frisco.

If Town determines after an audit that the Gross Revenues Collected for any reporting period as shown by Concessionaire's report(s) have been understated by more than three percent (3%), Concessionaire shall pay to Town the cost of such audit, the amount of any deficiency and interest, at the rate of 1.5% per month, on such amount. The Town's right to perform such an audit shall expire three (3) years after Concessionaire's certified reports have been delivered to the Town.

If the audit conducted by the Finance Director shows that the Concessionaire's Gross Revenues Collected reports have been understated more than three percent (3%), Concessionaire shall have the right to have an independent audit conducted at its expense. Such audit shall be completed within thirty (30) days from the date Concessionaire is notified of the results of the Finance Director's audit. The Finance Director and the independent auditor shall attempt to reconcile any discrepancies between the two audits. If the Finance Director and the independent auditor are unable to reconcile any such discrepancies, either party may enforce its right or remedies under this section by appropriate judicial action as provided by law.

Concessionaire expressly agrees that Finance Director may inspect any sales tax return or report and accompanying schedules and data which Concessionaire may file with Town pursuant to the Town's Retail Sales Tax Ordinance and Concessionaire waives any claim of confidentiality which it may have in connection therewith.

(b) Operating Fees.

(i) Concessionaire shall pay 10% of all gross revenues collected (the "Operating Fee") to Frisco. Concessionaire agrees to pay DRReC directly all sums due and owing from time to time pursuant to any permit that may be issued by DRReC to Concessionaire.

(ii) On or before the 15th of each month, Concessionaire shall pay to Frisco the Operating Fee that accrued during the immediately previous operating month. Non-payment of the Operating Fee shall constitute a material breach of this Agreement for which Frisco may terminate this Agreement pursuant to Section 8 herein

6. Concessionaire's Specific Responsibilities. Concessionaire shall be responsible for the following:

(a) *Generally.* Concessionaire shall monitor its Operations, meet monthly with Frisco staff to assure continued coordination of activities, and work toward the accomplishment of Frisco's Service Standards. Concessionaire shall designate a person to serve as the primary contact with Frisco. Until such designation is changed in writing, Doug Sakata shall be such contact.

(b) *Safety.* In addition to undertaking such safety measures as are normal and customary in the food service industry, Concessionaire shall provide any safety measures reasonably required by Frisco from time to time.

(c) *Daily Operation.* During the Term of this Agreement, Concessionaire shall schedule its Operations for lunch dinner/happy hour services seven days per week during the Marina operating season. The length of the daily services also may be longer or shorter depending on weather conditions, at Concessionaire's discretion, and reservations may be taken at various hours outside these daily hours of operations for catering or other special events. Concessionaire shall be available by phone at all other times to accommodate Concessionaire's customers and shall make such phone number available to the Marina Staff.

(d) *Financial records.* Concessionaire shall maintain complete and accurate financial records and information with respect to its Operations and shall retain all such records and information for no less than three years from their date of origination. Concessionaire shall make such records and information available for inspection by Frisco upon request.

(e) *Permits.* Concessionaire is responsible for obtaining all permits required by DRReC, Fire Department, Health Department, and any other governing agencies. Concessionaire shall provide proof of such permitting to the Finance Director for the Town of Frisco prior to commencing Operations for the Term of this Agreement.

(f) *Janitorial Services and Trash Removal* Concessionaire shall provide at its sole cost and expense: (1) daily janitorial services for the Leased Premises and any other portion of the Frisco Bay Marina that is used by concessionaire from time to time in connection with its food and beverage operations; (2) regular trash removal for waste created in connection with food and beverage operations. Concessionaire is encouraged to engage in the recycling of waste so created. (3) Concessionaire shall pay

to Frisco 66.66% of the cost incurred by Frisco for daily janitorial services and supplies for the public restrooms at the Frisco Bay Marina.

(g) *Premises.* The Concessionaire shall provide, at its sole cost and expense, all furnishings, fixtures and equipment necessary or desirable to effectively provide its Food and Beverage Operations within the Leased Premises, including but not limited to restaurant and bar furniture, fixtures and equipment, a register, credit card system and telephone lines; provided, however, that Frisco shall provide a walk-in cooler, fire suppression system, and bar tops for the facility.

(h) *Sponsorship of Town Events* Concessionaire shall support at least four Town-sponsored special events at the Frisco Bay Marina each calendar year. Such support shall consist of the provision of food and beverage services to the Town on an at cost basis for such events, with the details of such services to be negotiated on a case by case basis. In cases where the Concessionaire will receive special promotional exposure as a result of a Town-sponsored special event, the Town may negotiate with Concessionaire for the provision of food and beverage services on a below cost basis. The dates of the Town-sponsored special events to be supported by Concessionaire pursuant to this subsection shall be negotiated in good faith between the parties and agreed to prior to the beginning of the each respective operating season.

(i) *Food and beverage menu and pricing* Prior to the offering of any food or beverages for sale at the Frisco Marina, Concessionaire shall present to the Town for its approval, which approval shall not be unreasonably withheld, the menu for such food and beverages and the prices to be charged by the Concessionaire for the same.

(j) *Employees.* Concessionaire shall provide such employees for the Operations as it deems necessary. All employee benefits, including FICA and worker's compensation insurance, shall be provided and paid for by Concessionaire. With respect to its employees:

- I. the Concessionaire hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the "Programs") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement;
- II. the Concessionaire shall not knowingly employ or contract with an illegal alien to perform the work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Concessionaire that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- III. The Concessionaire has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

- IV. The Concessionaire is prohibited from using the Programs procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- V. If the Concessionaire obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the Concessionaire shall: (a) notify the subcontractor and Frisco within three (3) days that the Concessionaire has actual knowledge that the subcontractor is knowingly employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, required pursuant to C.R.S. § 8-17.5-102(2)(III)(A), the subcontractor does not stop employing or contracting with the illegal alien; except that the Concessionaire shall not terminate the contract with the subcontractor 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.
- VI. The Concessionaire shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- VII. Any violation of the provisions of this paragraph shall be deemed to be a material breach of this Agreement and Frisco may immediately terminate this Agreement for cause based on such violation. If this Agreement is so terminated, the Concessionaire shall be liable for actual and consequential damages to Frisco pursuant to C.R.S. § 8-17.5-102(3) and Frisco shall notify the office of the Secretary of State of such violation/termination.

(k) *Office equipment.* Concessionaire shall provide all office equipment necessary to effectively provide its Operations, including but not limited to, register, credit card system and radio and telephone lines.

(l) *Insurance.* During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance.

(m) Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.

(ii) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of six hundred

thousand dollars (\$600,000) disease – policy limit, and six hundred thousand dollars (\$600,000) disease – each employee.

(iii) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of Concessionaire's owned, hired and non-owned vehicles assigned to or used in performance of services under this Agreement. The policy shall contain a severability of interests provision.

(iv) Every policy required under this Section 6(m) shall be primary insurance and any insurance carried by Frisco, its officers or its employees or carried by or provided through any insurance pool of Frisco, shall be excess and not contributory insurance to that provided by Concessionaire. Concessionaire shall be solely responsible for any deductible losses under any policy required above. Any insured policy required under this Agreement shall be written by a responsible company.

(v) Prior to commencement of this Agreement, concessionaire shall provide Frisco with a certificate of insurance completed by Concessionaire's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Frisco.

(vi) Concessionaire shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Section 6(m) by reason of Concessionaire's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of Concessionaire to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which Frisco may immediately terminate this Agreement or, at its discretion, Frisco may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Frisco shall be repaid by Concessionaire to Frisco upon demand.

(vii) Concessionaire will notify Frisco of any accident, claim or potential claim involving Concessionaire or its Operations within twenty-four (24) hours of such accident or of learning of such claim or potential claim.

(n) *Signage.* Concessionaire shall provide on-site signage for its Operations at the Marina, which signage shall be subject to Frisco's sign code and to Frisco's prior approval as operator of the Marina, which approval shall not be unreasonably withheld.

7. Frisco's Specific Responsibilities. Frisco shall provide the following services or property to the Concessionaire:

(a) *Marketing.* Frisco shall review and shall have the right to approve all advertising and promotional events, races and special programs that Concessionaire wishes to conduct.

(b) *Inquiries.* Any telephone inquiries regarding Concessionaire received by Frisco employees shall be directed to Concessionaire at 970-668-9999. Anyone making an in-person inquiry regarding Concessionaire at a Frisco office shall be directed to Concessionaire's location where he or she will be met by Concessionaire.

8. Termination.

(a) Either party may terminate this Agreement by written notice to the other in the event that the other party is in breach of any of its obligations hereunder. A party shall be deemed to be in breach if it fails to remedy any default or failure to perform hereunder within fifteen (15) days after written notice from the other party of such default or failure or, in the event such default or failure is non-monetary and cannot be remedied within fifteen (15) days, if the party in breach fails to initiate such cure within fifteen (15) days after notice from the other party or fails diligently to pursue such cure thereafter.

(b) Without limiting Frisco's right to declare and give notice of a default or failure to perform by Concessionaire based on Frisco's reasonable determination that Concessionaire is in default or has failed to perform its obligations under this Agreement, including but not limited to, complying with all of the Service Standards and paying fees in a timely manner, Concessionaire shall be deemed to be in breach if Frisco has received three or more written complaints within any twelve month period concerning any similar default or failure to perform by Concessionaire. In the event of a breach based upon Frisco's receipt of three or more written complaints as described herein, Concessionaire shall be deemed to be in breach without the need for Frisco to provide written notice of a default or failure to perform, provided that Frisco has provided Concessionaire with a copy of each of the first two written complaints within seven days of Frisco's receipt thereof. After receipt of the third such written complaint, Frisco may terminate this Agreement.

(c) The foregoing notwithstanding, this Agreement shall terminate at such time as the Permit is terminated by DRReC or the Denver Water Lease is terminated by Denver Water and the terminated Permit or Denver Water Lease is not reissued or renewed for a succeeding period on terms substantially similar to the existing terms of the Permit and the Denver Water Lease.

(d) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20.

9. Remedies. Any of the foregoing remedies shall not preclude the pursuit of any other remedies herein provided or any other remedies provided by law, nor shall any remedy constitute a forfeiture or waiver of any fees owed to Frisco or to any damages occurring to Frisco by reason of the violation of any of the terms or provisions herein contained.

10. Indemnification.

(a) Concessionaire agrees to indemnify and hold harmless Frisco, its officers, employees 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, or any other loss of any kind whatsoever, which arise out of or are in any manner

connected with this Agreement, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of the Concessionaire, or of any subcontractor of the Concessionaire, or any officer, employee, representative or agent of the Concessionaire or of any subcontractor of the Concessionaire, or any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, handle, respond to and provide defense for and defend against, any such liability claims or demands at the sole expense of Concessionaire or, at the option of Frisco, agrees to pay for, or reimburse Frisco for, the defense costs incurred by Frisco in connection with any such liability, claims or demands. Concessionaire also agrees to bear all other costs and expenses related thereto, including court costs and reasonable attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. The obligations of Concessionaire shall not extend to any injury, loss or damage which is caused solely by the act, omission or other fault of Frisco, its officers or its employees.

(b) The parties hereto understand and agree that Frisco is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., CRS., as from time to time amended, or otherwise available to Frisco, its officers or its employees.

11. Assignment. Concessionaire shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer its rights under this Agreement or any interest herein without the prior written consent of Frisco in each instance. Frisco may withhold such consent in its sole and absolute discretion. Any transfer without Frisco's prior written consent shall constitute a default under this Agreement and shall be void and shall confer no rights upon any third party. Without limiting the generality of the foregoing, if Concessionaire is not a natural person, any change in the parties controlling Concessionaire on the date hereof, whether by sale of stock or other ownership interest, or otherwise, and any merger, dissolution, consolidation or other reorganization of Concessionaire, shall be deemed a transfer. Every assignment of this Agreement to which Frisco consents shall be by an instrument in writing pursuant to which the assignee expressly agrees for the benefit of Frisco to assume, perform and observe all of the Concessionaire's obligations under this Agreement. The consent by Frisco to a transfer shall not relieve Concessionaire from primary liability hereunder (which shall be joint and several with any assignees or other transferees) or from the obligation to obtain the express consent in writing of Frisco to any further transfer.

12. Notice. Whenever a provision is made in this Agreement for notice of any kind, such notice shall be in writing and signed by or on behalf of the party giving the same, and it shall be deemed sufficient notice if personally delivered to the other party or if sent by certified mail, postage prepaid, to the addresses set forth below for the parties or to such other address as either party may furnish by notice.

FRISCO
Town of Frisco
PO Box 4100
Frisco, CO 80443
Attn: Finance Director

CONCESSIONAIRE
Island Grill, Inc.
PO Box 15
Frisco, CO 80443
Attn: Bobby Kato

13. Entire Agreement. Except as otherwise expressly provided herein, this Agreement sets forth the entire agreement of the parties and supersedes all prior negotiations and understandings.

14. Relationship of Parties. Frisco and Concessionaire agree that nothing in this Agreement is intended to create, nor shall be deemed, held or construed as creating, any partnership, joint venture, employer/employee or other relationship between them other than that of Concessionaire as Frisco's independent contractor. Concessionaire shall at all times control the means and manner by which Concessionaire performs the work under this Agreement, subject to Frisco's right to monitor, evaluate and improve such work.

15. No Third Party Beneficiary. No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

16. Amendments. This Agreement may only be amended, supplemented or modified in a written document signed by both parties.

17. Colorado Law. This Agreement is to be governed by the laws of the State of Colorado.

18. Counterparts. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TOWN OF FRISCO, a Colorado municipality

THE ISLAND GRILL, INC:
a Colorado corporation

Gary Wilkinson, Mayor

Bobby Kato, President

ATTEST:

Deborah Wohlmuth, Town Clerk

FRISCO BAY MARINA
FOOD AND BEVERAGE CONCESSIONAIRE'S LEASE

THIS LEASE (this "Lease") is made this 12th day of March, 2019 by and between the TOWN OF FRISCO, COLORADO, a Colorado municipal corporation, with an address of P.O. Box 4100, Frisco, Colorado 80443 ("Landlord") and THE ISLAND GRILL, INC., a Colorado corporation d/b/a The Island Grill, with an address of P.O. Box 15, Frisco, CO 80443 ("Tenant").

In consideration of the premises, the mutual covenants contained in this Lease and that certain Frisco Bay Marina Concessionaire Agreement entered into between parties hereto on or about March 12, 2019 (the "Concessionaire Agreement"), and each and every act to be performed by the parties, Landlord and Tenant agree as follows:

1. Premises. Landlord by this Lease leases and demises to Tenant, and Tenant takes and hires from Landlord the real property and improvements located in the Frisco Bay Marina at 249 Marina Road, Town of Frisco, Summit County, Colorado described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises").

2. Use and Occupancy.

A. Tenant covenants and agrees (i) to occupy the Premises in accordance with those uses set forth in the Concessionaire Agreement and in accordance with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises and all applicable protective covenants and all rules, orders, regulations and requirements of the Board of Fire Underwriters, or any other similar body, having jurisdiction over the Premises and for no other purpose; and (ii) to use the Premises in a careful, safe and proper manner; and (iii) not to use or permit the Premises to be used for any purpose prohibited by the laws, ordinances, codes, rules and regulations of the United States, the State of Colorado or the Town of Frisco.

B. Tenant shall not commit waste, or suffer or permit waste to be committed, or permit any nuisance on or in the Premises. The use and occupation by Tenant of the Premises shall be subject to the terms and conditions of this Lease.

3. Term and Possession. The term of this Lease shall be concurrent with the term of the Concessionaire Agreement (the "Lease Term"), and any notice of termination or non-renewal of the Concessionaire Agreement shall constitute an effective notice of termination of this Lease Agreement. Tenant's taking possession of the Premises shall be conclusive evidence against Tenant that the Premises as of the date of taking possession were in good order and repair. Should Tenant hold over after the expiration or termination of this Lease, such holding over shall be construed as a month-to-month tenancy on all of the terms and conditions of this Lease reasonably

applicable to a month-to-month lease at a minimum base rent of Two Thousand Dollars (\$2,000.00) per month. In the event of any unauthorized holding over, Tenant shall also indemnify Landlord against all claims for damages by any person to whom Landlord may have leased all or any part of the Premises effective after the termination of this Lease.

4. Rent. Rent for the Lease Term shall be the payments due under the Concessionaire Agreement. All payments required under this Lease shall be paid without notice, demand, setoff or deduction, in lawful money of the United States of America, at Landlord's address as set forth in the first paragraph hereof or at such other place as Landlord may from time to time designate in writing.

5. Security Deposit. Tenant shall maintain with Landlord a security deposit of \$1,000 (the "Security Deposit") as security for the payment by Tenant of rent and additional rent and for the faithful performance of all the terms, conditions and covenants of this Lease. If at any time Tenant defaults in the performance of any provision of this Lease, Landlord may, but shall not be required to, use all or part of the Security Deposit in payment of any of the rent or additional rent in default, or any expense, damage, or liability suffered by Landlord by reason of Tenant's default. In such event, Tenant shall, within five days after written demand from Landlord, deposit with Landlord a sufficient amount in cash to restore the Security Deposit to its original amount. If Landlord's claims exceed the Security Deposit, Tenant shall remain liable for the balance of such claims. The Security Deposit shall not be considered an advance payment of rent or a measure of Landlord's damages in case of default by Tenant. If Tenant shall fully perform every provision of this Lease, the Security Deposit, or any balance thereof remaining, shall be returned to Tenant within a reasonable time after the expiration of this Lease and Tenant's vacation of the Premises. Landlord shall have the right to commingle the Security Deposit with other funds of Landlord, and Tenant shall not be entitled to interest on the Security Deposit. Landlord shall deliver the Security Deposit to the purchaser of Landlord's interest in the Premises in the event such interest be sold, and thereupon Landlord shall be discharged from further liability with respect to the Security Deposit. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit except as part of a permitted assignment of this Lease.

6. Expenses of Operating the Premises.

A. Utilities.

(i) Landlord. Landlord shall provide the necessary mains, conduits and facilities in order that water, electricity, telephone, and sewer may be furnished to the Premises. Landlord also agrees to pay 1/3 of gas, electric, cleaning, and toiletries charges.

(ii) Tenant. As additional rent, Tenant shall pay, prior to delinquency, water, sewer, annual security inspections, quarterly fire system fees, and telephone charges. Tenant will maintain trash enclosure ensuring

proper cleanliness and will pay for all trash, recycling, and disposal fees. Tenant will pay 2/3 of gas, electric, cleaning, and toiletries charges.

B. Maintenance and Repairs.

(i) Landlord. Landlord shall keep the foundations, exterior walls, roof, electrical, heating, water and sewer systems of the Premises in good repair, except that Landlord shall not be required to make any repairs which become necessary or desirable by reason of any negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees. In addition, Landlord shall be responsible for the periodic mowing of turf area outside of the Premises.

(ii) Tenant. Tenant shall keep the interior of the Premises, including, but not limited to, plate glass, interior walls, floors, ceilings, and lighting fixtures, in good repair at its own expense and cost. As a part of the consideration for this Lease, Tenant shall maintain the Premises; shall be responsible for and keep any and all sidewalks, alleys, parking areas adjacent to or on the Premises clean, orderly and free of trash, debris, papers, ice, snow and other hazards or obstructions; and shall place all trash and refuse deposited outside any building in covered receptacles. Areas that require special access will be kept clear and be in compliance with all regulations regarding storage of items.

C. Taxes.

(i) Personal Property, Etc. Tenant shall be responsible for and pay before delinquency any and all taxes and assessments levied or otherwise charged by any governmental entity on the personal property of Tenant, on Tenant's privilege of doing business, on Tenant's sales or otherwise resulting from Tenant's conduct of operations on or at the Premises.

(ii) Real Property. Tenant shall be responsible for and pay before delinquency any and all real property taxes attributable to Tenant's leasehold estate. The Landlord shall be responsible for and pay before delinquency all general and special real estate taxes, special assessments, assessments for improvements, special district or improvement district assessments, water taxes, sewer tax and all other taxes, charges, rates, levies and assessments of whatever nature levied, assessed or collected by any governmental or quasi-governmental authority (whether now existing or hereafter created) upon or with respect to the Premises of Landlord's ownership or operation thereof, and all taxes or charges imposed in lieu of (or in lieu of any increases in) any such tax.

D. Reimbursement; Proration. If Landlord deems it necessary to pay any expenses described in this Section 6, Tenant shall reimburse Landlord promptly upon demand. If the Lease Term commences after the beginning of, or expires before the end of, a calendar year, any amount payable by Tenant with respect to that calendar

year under this Section 6 shall be adjusted proportionately on a daily basis, and the obligation to pay such amount shall survive the expiration or earlier termination of this Lease.

7. Alterations and Modifications.

A. Tenant covenants and agrees not to make any alterations, changes or additions in and to the Premises ("Modifications") without the prior written consent of Landlord in each instance. All Modifications approved by Landlord shall be at Tenant's expense. Tenant acknowledges that Landlord's consent will be conditioned upon, at Landlord's option, among other things, Landlord's approval of plans, specifications, contractors, insurance and hours of construction. Tenant's compliance with Town ordinances and regulations relative to the issuance of building permits shall not satisfy the requirement that written approval from Landlord be obtained before installation or construction of Modifications is begun, and the Town of Frisco hereby reserves to itself the contractual right, as Landlord, to review and evaluate Tenant's plans for all Modifications and that this reserved contractual right is in addition to, independent of and distinct from the Town of Frisco's authority as a home rule town to review plans prior to issuance of a building permit. Landlord's consent to Tenant's Modifications shall not be unreasonably withheld, but any approval or denial shall be based on Landlord's best judgment as a landlord, not on the standards by which building permits are issued or denied.

B. All Modifications installed by Tenant shall become and remain the property of Landlord, unless otherwise agreed in writing. All trade fixtures installed by Tenant and removable without structural injury to the building may be removed by Tenant before or at (but not after) the expiration of this Lease, provided that Tenant shall repair, and shall remain responsible for repairing, any damage done to the Premises in removing such trade fixtures. Tenant agrees to protect, indemnify and save harmless Landlord on account of any injury to persons or property by reason of any Modification by Tenant, and to protect, indemnify and save harmless Landlord from the payment of any claim of any kind or character on account of bills for labor or materials in connection with any Modification by Tenant. Upon any changes in door lock keys, a new key will be provided to the Marina main office immediately upon making the change.

8. Leasehold Improvements.

A. Except as expressly set forth herein, any improvements to the Leased Premises shall be made at Tenant's sole cost and expense. In making such improvements, the Tenant shall submit plans for such improvements to the Landlord for approval, which approval shall not be unreasonably withheld or delayed. The Tenant shall make or cause to be made such improvements promptly, in a good workmanlike manner, in compliance with all applicable permits and authorizations and building and zoning laws and all laws, in accordance with the orders, rules and regulations of the Town codes. All such improvements shall become the property of Landlord at the

expiration or termination of the Lease Term and shall be surrendered with the Leased Premises.

9. Liability and Insurance.

A. Landlord shall not be liable to Tenant, its agents, servants, employees, invitees or licensees, for any injury to persons or damage to property caused by any negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees, and Tenant agrees to protect, indemnify and save harmless Landlord from all claims for any such injury and damage.

B. At all times during the Lease Term, Tenant shall carry, at Tenant's expense, with insurance companies and on forms satisfactory to Landlord: (i) Comprehensive general liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, including contractual liability insurance covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in this Lease; and (ii) "All risk" insurance (including sprinkler leakage, if applicable) covering all leasehold improvements, equipment, fixtures, appliances, furniture, furnishings and personal property from time to time installed or placed in, on or upon the Premises by or for Tenant, in an amount not less than the full replacement cost without deduction for depreciation. Any casualty or fire policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated pursuant to Section 18. Tenant shall maintain such coverage throughout the Lease Term. Certificates of insurance evidencing all insurance required by this Lease or, at Landlord's request, certified copies of the policies, shall be delivered to Landlord prior to Tenant's occupancy of the Premises and thereafter at least 30 days prior to the expiration of each such policy. Such insurance shall provide that Landlord and any other additional insured, although named as insured, shall nevertheless be entitled to recover under such policy for any loss occasioned to it, its agents or its employees, notwithstanding any act or omission of Tenant. All such policies shall provide that they may not be terminated or amended except after thirty (30) days' written notice thereof to Landlord and all other additional insured's. All such insurance shall be written as primary policy, not contributing with and not in excess of coverage that Landlord may carry.

C. Landlord and Tenant each hereby waive any and all rights to recover against the other, its agents, employees and representatives for any loss or damage to the property of such waiving party arising from any cause or type of peril covered by any insurance required to be carried by such party pursuant to this Section 9 or any other insurance actually carried by such party. Landlord and Tenant shall cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises or the contents thereof. Tenant shall cause all occupants of the Premises claiming under or through Tenant to execute and deliver to Landlord a waiver of claims as stated above and to obtain waiver of subrogation rights endorsements as stated above.

10. Default. Each of the following events shall be an event of default (an "Event of Default") by Tenant under this Lease:

A. Tenant shall fail to pay any installment of the rent hereby reserved and such failure shall continue for a period of ten (10) days;

B. Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant;

C. Tenant shall become insolvent, shall make a transfer to defraud, hinder or delay creditors or shall make an assignment for the benefit of creditors;

D. Tenant shall file a petition under any provision of Title 11 of the United States Code, as amended from time to time, or under any reorganization, dissolution, insolvency, liquidation or similar law of the United States or any state thereof; or Tenant shall be adjudged a debtor or to be bankrupt or insolvent in proceedings filed against Tenant under any such law;

E. A receiver, custodian or trustee shall be appointed for all or substantially all of the assets of Tenant or for Tenant's operations conducted in or at the Premises;

F. This Lease, the Premises, or any part of either shall be taken upon execution or by other process of law directed against Tenant or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, and such attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof;

G. Any license, permit or other authorization necessary for Tenant's operations conducted on or at the Premises shall be revoked, suspended or renewal thereof shall be denied for any reason;

H. Tenant shall amend its Governing Documents, otherwise terminate its existence or substantially modify its purposes or ownership structure;

I. Tenant shall desert, abandon or vacate the Premises;

J. Tenant shall fail to comply with any provision of the Code of Ordinances or other ordinances, rules or regulations of the Town of Frisco in force from time to time; and

K. Tenant shall fail to maintain or repair the Premises.

11. Landlord's Remedies. Upon the occurrence of any Event of Default, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether herein set forth or existing at law or equity:

A. Landlord shall have the right to terminate this Lease by giving Tenant written notice at any time. No act by or on behalf of Landlord, such as entry of the Premises by Landlord to perform maintenance and repairs and efforts to relet the Premises, other than giving Tenant written notice of termination, shall terminate this Lease. If Landlord gives such notice, this Lease and the Lease Term as well as the right, title and interest of Tenant under this Lease shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's liability) on the date specified in such notice as if such date were the expiration date of the Lease Term without the necessity of reentry or any other act on Landlord's part. Upon any termination of this Lease Tenant shall quit and surrender to Landlord the Premises as set forth in Section 18. If this Lease is terminated, Tenant shall be and remain liable to Landlord for damages as hereinafter provided and Landlord shall be entitled to recover forthwith from Tenant as damages an amount equal to the total of: (i) all rent and other sums accrued and unpaid at the time of termination of the Lease, plus interest thereon at the rate provided in Section 11(C), and (ii) the amount of rent and all other sums that would have been payable hereunder if the Lease had not been terminated, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, tenant inducements, legal expenses, attorneys' fees, alteration, remodeling and repair costs, expenses of employees, and expenses of preparation for such reletting, which damages Tenant shall pay to Landlord on the days on which the rent and other sums would have been payable if the Lease had not terminated, or, alternatively, at Landlord's option, an amount equal to the present value (discounted at the rate of 8% per annum) of the balance of the rent and other sums payable for the remainder of the stated term of this Lease after the termination date less the present value (discounted at the same rate) of the reasonable rental value of the Premises for such period, plus all of Landlord's expenses incurred in repossessing the Premises and reletting (or attempting to relet) the Premises, including, but without limitation, the expenses enumerated above, and all other amounts necessary to compensate Landlord fully for all damage caused by Tenant's default. No provisions of this Lease shall limit or prejudice the right of Landlord to prove for and obtain, as liquidated damages by reason of any termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount referred to above.

B. Landlord may, without demand or notice, reenter and take possession of the Premises or any part thereof, and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants. If Landlord elects to reenter as provided in this Section 11(B), or if Landlord takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals, and upon such other conditions as Landlord may in its absolute discretion deem advisable, with the right to make alterations and repairs to the Premises. No such reentry, repossession or reletting of the Premises by Landlord

shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant by Landlord. No such reentry, repossession or reletting of the Premises shall relieve Tenant of its liability and obligation under this Lease, all of which shall survive such reentry, repossession or reletting. Upon the occurrence of such reentry or repossession, Landlord shall be entitled to the amount of the monthly rent and all other sums which would be payable hereunder if such reentry or repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, the expenses enumerated in Section 11(A) above. Tenant shall pay such amounts to Landlord on the days on which the rent and other sums due hereunder would have been payable hereunder if possession had not been retaken. In no event shall Tenant be entitled to receive the excess, if any, of net rent collected by Landlord as a result of such reletting over the sums payable by Tenant to Landlord hereunder. If this Lease is terminated as a result of Landlord's actions in retaking possession of the Premises or otherwise, Landlord shall be entitled to recover damages from Tenant as provided in Section 11(A).

C. Landlord shall have the right to recover from Tenant the rents and damages provided for above by suit or suits brought from time to time without Landlord being required to wait until the expiration of the Lease Term, or if this Lease is terminated, the date on which such expiration would have occurred. If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or shall default in performing any other obligations of Tenant under this Lease, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. All sums so expended by Landlord with interest thereon shall be repaid by Tenant to Landlord on demand. No such payment or expenditure or other action by Landlord shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Landlord by reason of such default. Whenever Tenant shall be required to make payment to Landlord of any sum with interest, interest shall be payable from the date such sum is due until paid, at an interest rate equal to the annual interest rate announced publicly from time to time by the Chase Manhattan Bank of New York City as its prime rate or its base corporate borrowing rate if the same is at any time not called the prime rate plus 10% per annum or at the maximum rate permitted by law, whichever is lower. As used in this Lease, the terms "reenter," "reentry," "take possession," "repossess" and "repossession" are not restricted to their technical legal meaning.

12. Quiet Enjoyment. Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Lease Term so long as Tenant complies with the provisions of this Lease.

13. Force Majeure; Landlord's Failure to Perform. Anything in this Lease to the contrary notwithstanding, Landlord shall not be in default with respect to the performance of any of the terms, covenants or conditions of this Lease if such default shall be due to any strike; lockout; civil commotion; riot; invasion; rebellion; sabotage; governmental regulations or controls, except those imposed by the Town of Frisco; inability to obtain any material, service or financing; an act of God; or any other cause

beyond the control of Landlord; provided that such cause is not due to the willful or grossly negligent act or omission of Landlord or its agents or employees. Further, Landlord shall not be deemed to be in default in the performance of any of its obligations unless and until it has failed to perform such obligation within 30 days after written notice from Tenant specifying Landlord's failure to perform; but if the nature of Landlord's obligation is such that more than 30 days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such 30-day period and thereafter diligently prosecutes same to completion.

14. Signs. Tenant shall not place or paint any signs, window stickers or decals or other similar materials (collectively, "Signage") at, on, or above the Premises, or on windows or doors of the Premises, or in, on, or above any streets, walks or parking areas, nor paint any exterior surface of the Premises without the prior written consent of Landlord; and Landlord shall have the right to remove any Signage in order to paint the Premises or to make any other repairs or alterations to the Premises. Tenant acknowledges that Landlord's consent will be conditioned upon, at Landlord's option, among other things, Landlord's approval of plans and specifications for any Signage and that Tenant's compliance with Town ordinances and regulations relative to signs and the issuance of a sign permit shall not satisfy the requirement that written approval from Landlord be obtained before installation or construction of signage has begun. The Town of Frisco hereby reserves to itself the contractual right, as Landlord, to review and evaluate Tenant's plans for all Signage and this reserved contractual right is in addition to, independent of and distinct from the Town of Frisco's authority as a home rule town to review sign plans prior to issuance of a sign permit. Landlord's consent to Tenant's proposed Signage shall not be unreasonably withheld, but any approval or denial shall be based on Landlord's best judgment as a landlord, not on the standards by which building permits are issued or denied

15. Relationship of Parties. Landlord and Tenant agree that nothing in this Lease shall be deemed, held or construed as creating any relationship between them other than that of Landlord and Tenant.

16. Assignment and Subletting. Tenant shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer this Lease or any interest herein or sublet all or any part of the Premises, or suffer or permit the Premises or any part thereof to be occupied by others (any and all of which hereinafter shall be referred to as a "Transfer"), without the prior written consent of Landlord in each instance. Landlord may withhold such consent in its sole and absolute discretion. Any Transfer without Landlord's prior written consent shall constitute an Event of Default hereunder and shall be void and shall confer no rights upon any third person. Without limiting the generality of the foregoing, if Tenant is not a natural person, any change in the parties controlling Tenant on the date hereof, whether by sale of stock or other ownership interests, or otherwise, and any merger, dissolution, consolidation or other reorganization of Tenant, shall be deemed a Transfer. Every assignment of this Lease to which Landlord consents shall be by an instrument in writing pursuant to which the assignee expressly agrees for the benefit of Landlord to assume, perform and observe all of Tenant's obligations under this Lease. If any Transfer shall occur, with or without

Landlord's prior consent, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or other transferee, and apply the net amount collected to the rent herein reserved, but no such collection shall be deemed a waiver of this Section 16, or the acceptance of the assignee, subtenant or other transferee as the tenant hereof, or a release of Tenant from continuing liability to perform this Lease. The consent by Landlord to a Transfer shall not relieve Tenant from primary liability hereunder (which shall be joint and several with any assignees, subtenants and other transferees) or from the obligation to obtain the express consent in writing of Landlord to any further Transfer.

17. Eminent Domain. If the entire Premises or so much thereof as shall render the balance untenable shall be taken by right of eminent domain or sold under threat of the exercise of such right, this Lease shall terminate as of the date the condemning authority takes physical possession. If only part of the Premises is so taken or sold and as a result thereof Landlord decides that substantial alteration or reconstruction of the Premises is desirable or Landlord decides to demolish or discontinue operating the Premises, Landlord may, at its option, terminate this Lease by written notice to Tenant given within 45 days after such taking or sale. Tenant shall pay all rent under this Lease due through the date of any termination of this Lease pursuant to this Section 16. In the event of any taking or sale whatsoever, all awards, damages and proceeds shall belong to Landlord, and Tenant hereby assigns to Landlord the interest, if any, of Tenant in such awards, damages and proceeds.

18. Casualty.

A. If, during the Lease Term, the Premises shall be damaged by fire, explosion, windstorm or other casualty (a "Casualty"), Tenant shall give Landlord prompt notice in writing of the Casualty (the "Casualty Notice").

B. If it reasonably appears to Landlord that the damage caused by the Casualty can be repaired with reasonable diligence within one hundred eighty (180) calendar days from the date of Landlord's receipt of the Casualty Notice, Landlord shall proceed promptly to repair such damage, so as to restore the Premises to their condition prior to the Casualty. But, if it reasonably appears that such damage cannot be so repaired within the 180-day period and Landlord notifies Tenant in writing on or before thirty (30) calendar days after the date of Landlord's receipt of the Casualty Notice, or if the damage is not insured, this Lease shall terminate as of the date of the Casualty Notice, and all rent and additional rent shall be prorated to that date. During the period of repairs, the rent shall be abated based on the ratio that the square footage of the portion of the Premises that are damaged bears to the square footage of the entire Premises. Notwithstanding anything to the contrary contained in this Section 17, if the Casualty is due to the negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees, this Lease shall remain in full force and effect, and there shall be no abatement of rent.

C. Landlord's election to repair, or Landlord's commencement of any repairs, shall not constitute a waiver by Landlord of any of its rights to proceed against Tenant for damages resulting from the Casualty to the extent the Casualty is due to the

negligent or willful act or omission of Tenant, its agents, servants, employees, and invitees or licensees.

19. Delivery of Premises. Upon the expiration or termination of this Lease, Tenant shall deliver the Premises in good repair and condition, excepting only normal wear and tear since the last required repairs. If Tenant is not then in default hereunder, Tenant may remove from the Premises any trade fixtures and movable equipment and furniture placed therein by Tenant subject to the terms of Section 7(B). Whether or not Tenant is in default hereunder, Tenant shall remove such alterations, additions, improvements, trade fixtures, equipment and furniture as Landlord shall require, and Tenant shall fully repair any damage occasioned by such removal. If Tenant fails to remove such items requested by Landlord, such items shall conclusively be deemed to have been abandoned, and Landlord shall have the right to sell or otherwise dispose of such items without obligation to account to Tenant therefor. Tenant shall be responsible for all costs connected with such sale or disposal of such items. Tenant's obligations to observe and perform the covenants in this Section 19 shall survive the expiration or the termination of this Lease.

20. No Implied Surrender or Waiver. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No act or thing done by Landlord or Landlord's agents during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employees of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord, or of Landlord's agents, shall not operate as a termination of this Lease or a surrender of the Premises. No payment by Tenant, or receipt by Landlord, of a lesser amount than the rent due hereunder, shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy available to Landlord. Time is of the essence hereof.

21. Access to the Premises. Landlord, its agents and employees shall have the right to enter the Premises at all times to examine the Premises, to post notices as Landlord deems necessary or desirable for the protection of Landlord or the Premises, and to make such repairs, alterations, improvements and additions to the Premises as Landlord may be required to perform under this Lease or as Landlord may deem necessary or desirable, and may for such purposes bring and keep upon the Premises all necessary materials, supplies and equipment, without the same constituting an eviction of Tenant in whole or in part or entitling Tenant to any abatement of rent or damage, by reason of loss or interruption of business, or otherwise, nor shall the same

affect Tenant's obligations under this Lease in any manner whatsoever. If Tenant shall not be present to open the Premises for any such entry, Landlord may gain entry by use of a master key or card, and in an emergency by any means (including breaking any doors or windows), without rendering Landlord, its agents or employees liable therefor. In exercising its rights under this Section 21, Landlord shall attempt to minimize interference with Tenant's use and enjoyment of the Premises.

22. Notice. Unless otherwise specified herein, all notices shall be in writing and shall be deemed delivered upon hand delivery or three days after deposit in the United States mail, postage prepaid, addressed to the other party at the addresses set forth in the first paragraph of this Lease or at such other address as either party may direct from time to time pursuant to the terms of this Section 22.

23. Estoppel Certificate. Tenant shall, from time to time, upon request from Landlord, deliver to Landlord a statement certifying as to certain facts regarding this Lease, including without limitation, that this Lease is in full force and effect, that Tenant has no defenses or offsets to this Lease and that Landlord is not in default under this Lease together with any other facts Landlord may reasonably request. Tenant's failure to deliver such certificate shall be a material default hereunder. Tenant hereby acknowledges that such certificates may be relied upon by third parties.

23. Additional Provisions. None.

24. Miscellaneous.

A. Benefits. This Lease shall bind and inure to the benefits of the heirs, legal representatives, successors and permitted assigns of the respective parties hereto.

B. Amendments. No amendment, alteration, modification or addition to this Lease shall be valid or binding unless expressed in writing and signed by the party or parties to be bound thereby.

C. No Representations by Landlord; Entire Agreement. Landlord and Landlord's employees and agents have made no representations, warranties, agreements or promises with respect to the Premises except such as are expressed herein. The entire contract of the parties is contained herein, and there are no promises, agreements, representations, warranties, conditions or understandings, either oral or written, between them, other than as are herein set forth.

D. Attorneys' Fees. In the event of any litigation between Tenant and Landlord to enforce any provision of this Lease or otherwise with respect to the subject matter hereof, the unsuccessful party in such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred therein by the successful party. Landlord and Tenant hereby mutually waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of

Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage.

E. Construction. The language in all parts of this Lease shall be in all cases construed according to its fair meaning, and not strictly for or against Landlord or Tenant. The caption of each Section is added as a matter of convenience only and shall be considered of no effect in the construction of any of the provisions of this Lease.

F. Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first written above.

LANDLORD:

TENANT:

TOWN OF FRISCO

THE ISLAND GRILL, INC.

By: _____
Gary Wilkinson, Mayor

By: _____
Bobby Kato, President

ATTEST

By: _____
Name: Deborah Wohlmuth
Town Clerk



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: ADDISON CANINO, ASSISTANT PUBLIC WORKS DIRECTOR
RE: STREET DESIGN AND ACCESS CRITERIA UPDATE
DATE: MARCH 12, 2019

Summary Statement: To brief Council on the changes and updates made to the Town's Street Design and Access Criteria from April 2014.

Background: The April 2014 version of the Street Design and Access Criteria was reviewed by Town staff and found to be out of date. Not only was this document out of date, but it was found to be contradictory to rules and regulations that are in place by the Planning and Community Development Departments. These irregularities caused some confusion amongst Town staff during development reviews and to potential developers/designers.

Staff Analysis: It was decided that this document needed to be reworked to better reflect current design standards for construction, in addition to communicating the same message that other departments are trying to make. There are many changes that have been made from the April 2014 version to the January 2019 version. Not only have there been many updates to design standards, as mentioned previously, but now Public Works, Planning and Community Development are on the same page. This was accomplished by meeting with Katie Kent and Bill Gibson on multiple occasions to discuss the discrepancies between this document and other Town standards.

While all of the departments that participate in design reviews were able to communicate fluidly between one another and come to conclusions on designs, now we are in a position where we can relay the most accurate information to developers in a timely and efficient manner. Not only does this put the Town in a better position, but developers are not wasting time and money trying to design based on different pieces of information. The changes that have been made would also better protect the Town from a legal standpoint.

The April 2014 version of this document was riddled with formatting errors, outdated construction standards, outdated erosion control/water quality standards and contradictory information (as stated previously). Some of the major changes are as follows:

- Entire document
 - Town Manager or his designee has been changed to the Public Works Director in accordance with Section VI, Waivers to These Criteria.

- Introduction
 - Heavily modified from 2014; updated reference guides to what the Town uses for design practices. AASHTO, CDOT, Policy of Geometric Design for Streets.
 - The Public Works Director may also make changes to these criteria, and in doing so will ask if there is input from Town Manager or Council.

- I.B.5 – Street Classifications
 - Verbiage change showing the uniqueness of Main Street.

- I.C – Soils and Materials Testing
 - This entire section was laid out with more up to date guidelines on what the Town will be expecting from Materials and Soils Testing.

- I.F – Patching
 - Stating that our excavation permit has been changed to an excavation and right-of-way permit.

- I.G – Final Acceptance
 - Heavily modified from 2014. This states the testing that the Town now required and when those results will be due to the Town. There will be an inspection and notification of final acceptance. If roads are not accepted, a notice will be sent to developer stating problems.

- II.A – Sight Distance
 - Sight distance reference materials updated.

- II.A.2 – Sight Distance
 - Added intersection sight distance visual reference to give a better idea of what the Town is looking for during the design of an intersection.

- III – Cross Section Elements
 - Cross Section Elements were heavily revamped with better/more up to date design standards that most, if not all, designers should be aware of.

- III.D – Minimum Culvert Diameters
 - Section concerning culverts and how they should be constructed. There are many methods to do this, but we felt that these were out of date.

- III.E – Retaining Walls
 - Wanted to give the Town more leverage when someone proposes a retaining wall in the ROW. More requirements for constructing, and gives the Town a good starting point for removing/rebuilding/adding to in the future.

- IV.D – Driveways
 - Driveways have been a point where different departments asked for different things. With the changes made in this section, Public Works/Planning/CDD requirements align with one another.
 - One major change was taking out sections that cited the Galena Street Alley. This was something that was put in to this to better accommodate development of Cabin

- Housing. This was not a precedent that we wanted to stick with, so it has been removed.
- Design widths have been changed and it is noted that the Town will default to Fire Department requirements when Town requirements are not sufficient enough for Fire.
- IV.E – Pedestrian/Bicycle Facilities
 - In terms of Ped and Bike Facilities, there were discrepancies between what Public Works wanted to see and what CDD’s plan was for these facilities. In terms of designing them, we kept/updated some information, but in terms of giving a better visualization/detail, we reference the Town of Frisco Trails Master Plan. This is a great way to bridge the gap that we had been missing since 2014.
 - IV.H – Erosion Control
 - This was not clear as to what the Town was looking for in the 2014 version, so it has been updated to reference the Northwest Colorado Council for Government Water Quality Protection Standards as modified for the Town of Frisco. If there are differences between NCCGWQPS and Town Code, Section 180, Article 6, Town Code will supersede the NCCGWQPS.
 - IV.I – Traffic Signage and Traffic Calming
 - With the legal ramifications that could be a possibility with traffic signing and calming, we felt this was absolutely necessary to update. In some parts of the County, they have used traffic calming while designing roads. This is something that we did not want to completely nullify from a design, but we are open to the idea if it were done “right”.
 - V - Other
 - Section updated completely.
 - VI – Waivers to These Criteria
 - From a legal standpoint this section needed a complete overhaul. While we kept a lot from the 2014 version, we added more clear and concise direction for a developer to follow.
 - GIS Datum
 - No specific datum was addressed for the Town of Frisco, this has been changed to show that the Town preference is Colorado State Plane Central Zone NAD ’83 (92) coordinates.
 - Design Tables
 - These tables were previously out of order and did not flow with the document correctly. They have reordered in a manner which flows better with the document.

Staff Recommendation: It is my recommendation, that Frisco Town Council review the new changes set forth in the red line version of this document, and approve it for the upcoming 2019 building season. This January 2019 version is vast improvement over the version from April 2014. It is our job, as a Town, which encourages conscientious and responsible development, to give accurate and concurrent information when it is requested, and I am happy to say that this update does all of that.

Financial Impact: Adoption of the attached resolution will have no financial impact to the Town's budget.

Reviewed and Approved:

Jeff Goble, Public Works Director – Approved 3/5/19
Bonnie Moinet, Finance Director
Nancy Kerry, Town Manager - Approved

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 19-09**

A RESOLUTION ADOPTING THE TOWN OF FRISCO MINIMUM STREET DESIGN AND ACCESS CRITERIA, DATED MARCH 12, 2019.

WHEREAS, the Frisco Town Council has determined that it is in the best interest of its citizens and visitors to review and amend, periodically, the Town of Frisco Minimum Street Design and Access Criteria; and

WHEREAS, the Town's Public Works Director has reviewed the Town of Frisco Minimum Street Design and Access Criteria and has recommended changes to those standards based upon current best practices, and the general health, safety and welfare of citizens and visitors to the Town; and

WHEREAS, pursuant to Section 155-4 of the Town Code, street design shall conform to the Town's street construction specifications.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THAT:

The Town of Frisco Minimum Street Design and Access Criteria, dated March 12, 2019, is hereby adopted.

INTRODUCED, READ, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THIS 12TH DAY OF MARCH, 2019.

TOWN OF FRISCO:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk



TOWN OF FRISCO
MINIMUM STREET DESIGN
AND
ACCESS CRITERIA

February 12, 2019
March 12, 2019

Table of Contents

I.	General.....	3
A.	Introduction	3
B.	Street Classifications.....	3
C.	Soils and Materials Testing.....	4
D.	Design Speed.....	4
E.	Right-of-Way	4
F.	Patching	4
G.	Final Acceptance.....	5
II.	Basic Design Parameters.....	5
A.	Sight Distance	5
B.	Horizontal Alignment	6
C.	Vertical Alignment	7
III.	Cross Section Elements	7
A.	Concrete Pans, Curbs and Gutters (Concrete Drainage).....	7
B.	Travel Lane Standards	8
C.	Shoulder Standards.....	9
D.	Minimum Culvert Diameters	9
E.	Retaining Walls	10
F.	Guardrail	10
G.	Signs	10
H.	Barriers.....	10
I.	Pavement Design.....	10
IV.	Other Elements of Design	11
A.	Intersection.....	11
B.	Cul-de-Sacs, Alleys and Dead Ends.....	12
C.	Parking Spaces	12
D.	Driveways.....	13
E.	Pedestrian/Bicycle Facilities	15
F.	Temporary Unpaved Streets.....	15
G.	Half Streets	15
H.	Erosion Control.....	16
I.	Traffic Signage and Traffic Calming.....	16
V.	Other.....	16
VI.	Waivers to These Criteria	17
A.	Summary.....	17
B.	Application.....	17
C.	Appeals	17
VII.	Specifications	17
VIII.	Detailed Design Requirements	18
Table 1.....		20
Intersection Design.....		20
Table 2.....		20
Street/ROW Widths		20
Table 3.....		Error! Bookmark not defined.
Design Speeds.....		Error! Bookmark not defined.

I. General

A. Introduction

The purpose of this document is to specify established standard principles and practices to be used in the design and construction of streets or in Town right-of-way (unless otherwise noted) in order to provide for uniformity of streets within the Town of Frisco and to ensure the safety of the general public. Designs of streets for construction within the Town of Frisco limits shall be approved by the Town prior to construction. The design factors, formulas, and tables are intended to serve as guidelines for street design. Ultimate responsibility for actual design, however, remains with the design engineer. Sound engineering judgement must be applied. All streets shall be designed by a Colorado-licensed Civil Professional Engineer.

All new street design shall be in conformance with these design criteria unless otherwise approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria. Documents recommended for additional reference include the CDOT (Colorado Department of Transportation) Design Guide, latest edition, A Policy on Geometric Design of Highways and Streets and Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT<400) both published by AASHTO (American Association of State Highway and Transportation Officials), and ADA Standards for Accessible Design.

The Public Works Director may, from time to time as necessary, make changes to these Street Design Criteria. Prior to doing so both the Town Manager and the Town Council shall be notified and asked for any input they may have.

B. Street Classifications

The following classifications shall be utilized in determining the criteria under which a street is to be designed.

1. Alley – Provide for deliveries and back of house services to properties accessed off of another street. May also serve for access.
2. Local Streets – Provide primary access to abutting properties.
 - a. Commercial (ex. Ten Mile Drive)
 - b. Residential (ex. Lagoon Drive)
3. Collector Streets – Carry traffic from local streets to Major Arterial Streets, Highways and principle generators within the community, such as neighborhood shopping centers, schools and recreation areas (ex. 8th Avenue).
4. Major Arterial – Designed for the movement of through traffic and heavy local traffic. Arterials generally connect major traffic generators. In some instances, parking is not allowed on arterials, such as state highways (ex. Summit Boulevard).
5. Other – Main Street from Summit Boulevard to the West Frisco Interchange is unique in nature as it provides access and parking but also carries through traffic. Access directly from Main Street is discouraged.

C. Soils and Materials Testing

All soils and material testing shall be done by a soil/materials-testing firm under the supervision of a Colorado-licensed Geotechnical Professional Engineer.

For improvements made within Town ROW, soils testing and identification of the existing conditions shall be submitted to the Town with recommendations for structural sections. Structural sections shall be designed in accordance with Section III, I.

Improvements within Town ROW shall include observations and testing by a qualified Geotechnical Engineer. The testing firm will be required to provide sub-grade and road base for compaction test, materials testing of asphalt, road base, and concrete, and density tests of asphalt. All tests shall meet typical CDOT requirements for roadway construction. The Town shall be notified of any failed tests or unsuitable soils on site. Reports shall be provided to the Town promptly after preparation.

If unsuitable soils are encountered, a modified design shall be submitted by the Geotechnical Engineer to the Town for approval prior to construction.

The Town may not accept projects or may require a longer warranty period if there are test failures or testing has not been completed according to the requirements of this section or recommendations by the Geotechnical Engineer.

D. Design Speed

The choice of design speed is influenced principally by the character of terrain, type of roadway and traffic volume. A roadway in level or gently rolling terrain justifies a higher design speed than a roadway through steeper mountainous terrain.

Design speeds to be utilized for street design in the Town of Frisco are located in Table 1.

E. Right-of-Way

The width of right-of-way (ROW) required depends on the proposed future street classification, topography in the area, and other physical controls. Minimum ROW widths to be dedicated for street construction in the Town of Frisco are listed in Table 2.

Additional ROW width may be required to facilitate future widening and other improvements as traffic and development warrants it is necessary to meet side slope requirements.

F. Patching

Patching of Town streets shall require an Excavation/ROW Permit and shall follow the requirements detailed in the Excavation Ordinance of the Town Code (Chapter 87).

When new concrete (pan or curb and gutter) is added to an existing street, a minimum of two (2) feet of the existing roadway surface shall be removed and replaced to ensure a straight joint.

G. Final Acceptance

Soils and material testing results shall be provided to the Town every two (2) weeks during construction and at the end of construction. Inspection by the Town designee shall be required for asphalt, sub-base, sub-grade, and form inspection. Prior to acceptance of any new street, the sub-divider or developer shall request, in writing, inspection and acceptance by the Town and provide the Town all soils and material testing results. The Public Works Director shall inspect the street and notify the developer in writing of acceptance or non-acceptance of the street.

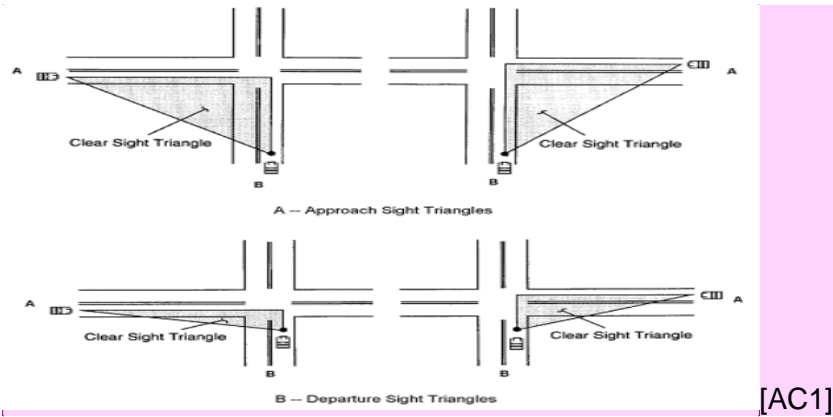
If not accepted, the notice shall identify reasons for non-acceptance so the developer may correct and re-apply. Until such time as the streets are accepted, the developer shall be fully responsible for all maintenance, including snow removal, for the street. The Town may not accept projects or may require a longer warranty period if there are failures or testing has not been completed according to the requirements of this section or recommendations by the Geotechnical Engineer.

II. Basic Design Parameters

All new street design shall be in conformance with these design criteria unless otherwise approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria. Documents recommended for additional reference include the CDOT (Colorado Department of Transportation) Design Guide, latest edition, A Policy on Geometric Design of Highways and Streets and Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT<400) both published by AASHTO (American Association of State Highway and Transportation Officials), and ADA Standards for Accessible Design.

A. Sight Distance

1. A primary consideration in the design of a street is to provide adequate sight distance for safe and efficient operation. There are two (2) types of sight distance to be considered; that required for visibility at an intersection and that required for stopping. AASHTO standards shall be met for these types of sight distances.
2. Intersection Sight Distance – Intersection sight distance is defined by AASHTO as adequate when a driver has an unobstructed view of the entire intersection and sufficient lengths of the intersection road to avoid collisions. AASHTO standards shall be met for the sight triangle. Obstructions of any type installed by private property owners are prohibited within Town ROW per Town Code Section Nos. 127-6 and 127-39.



B. Horizontal Alignment

1. *Standard for Curvature* – Table two (2) gives minimum centerline radii for curves. The table is based on design speed only. Increased radii may be required if minimum sight distances are not satisfied.
2. *Superelevation* – Superelevations shall not be used on streets within the Town.
3. *Reversing Curves* – True reversing curves are not to be used in the Town of Frisco except as noted herein. In cases where curves in opposite directions must be used, a tangent between shall be used. A minimum of fifty (50) foot tangent shall be used if at all possible between reverse curves to facilitate steering and control. Lesser tangent lengths may be considered with deflection angle curves less than ten (10) degrees.
4. *Broken Back Curves* – Broken back curves consisting of two curves in the same direction joined by a tangent less than fifty (50) feet shall not be used in the Town of Frisco, except on local streets with prior approval from the Public Works Director.
5. *Coordination with Vertical Alignment* – To avoid the possibility of introducing serious traffic hazards, coordination is required between horizontal and vertical alignment. Particular care must be exercised to maintain proper sight distances at all times.
6. *Pavement Transition* – A pavement transition is the area of variable pavement width encountered when changing from one roadway width, or section, to another. All pavement transitions shall be based on the following formula:

$$L=WS^2 / 60$$

Where: L = Length of transition or taper (in feet)

S = posted speed limit (in MPH)

W = offset in width

C. Vertical Alignment

1. *Grade Line* – The grade line is a reference line by which the elevation of the pavement and other features of the roadway are established. The grade line shall coincide with the street centerline for all streets.
2. *Grade* – The minimum and maximum grades as measured at centerline shall be one half percent (0.5%) and five percent (5%,) respectively. Steeper grades may be considered based on topography. Where allowed special consideration as to curves, solar exposure, and driveway limitations will be given. Steeper grades must be approved by the Public Works Director prior to design.
3. *Excessive Grade Changes* – Excessive grades shall not be permitted. Connections with existing streets shall be smooth transitions and existing grades shall be shown in the design for at least one hundred fifty (150) feet on all sides of a connection.
4. *Vertical Curves* – Properly designed vertical curves should provide adequate sight distance, safety, comfortable driving, good drainage, and pleasing appearance. Vertical curves in the Town of Frisco shall be parabolic curves.
5. *Intersection Grades* – Grades at intersections shall not exceed two percent (2%) at any point for one hundred (100) feet from the edge of the intersecting street, nor shall the grade exceed four percent (4%) overall for two hundred (200) feet from the same edge. Maximum grades may be increased beyond five percent (5%) for short distances in variable terrain when approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria. The through street may be up to a four percent (4%) grade through the intersection, although flattening the through street at the intersection is recommended.

III. Cross Section Elements

A. Concrete Pans, Curbs and Gutters (Concrete Drainage)

1. *General*

Minimum grade in all concrete drainage systems shall be one half percent (0.5%) measured along the flow line.

Concrete drainage systems shall be used when justified by sound engineering reasons based on the following:

- a. Where required for proper drainage.
- b. Where needed for channelization, pavement edge delineation, control of access, pedestrian safety, or other means of improving traffic flow and safety.
- c. Where vertical separation between the travel lanes and adjacent sidewalks or pathways is necessary.

2. *Types*

For specifications on types of concrete drainage systems available refer to CDOT *Standard Plans – M & S Standards*, latest edition. Refer to these types as specified in that publication on any plans submitted to the Town.

3. *Cross Pans*

- a. Cross-pans for drainage, located at stop intersections, shall be a minimum of ten (10) feet wide, six (6) inch thick concrete with six (6) inches of road base.
- b. Cross-pans are not allowed on Collector streets unless specifically approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.
- c. Cross-pans are not allowed on Major Arterial streets.
- d. Cross-pans may be considered on alleys and local streets as a method of speed control, if properly designed and marked.
- e. Cross-pan approaches shall be designed using the appropriate design speeds as given in these specifications.
- f. Crown transitions where approaching a cross pan or an intersecting street shall be at a maximum of one percent (1%) change every twenty-five (25) feet.

4. *Location*

Where concrete drainage systems are used, street width requirements shall be measured from lip of concrete to lip of concrete. The Public Works Director shall be consulted on the type of concrete drainage to be used at any location in Town.

5. *Concrete Class and Additives* – Concrete used for concrete drainage and sidewalks shall be CDOT Class D concrete.
 - a. *Strength* – minimum of four thousand five hundred (4500) psi
 - b. *Fibers* – “Fiber Mesh” fibers or approved substitute shall be added to the concrete for strength, at the rate of one and a half (1.5) pounds of fiber per cubic yard of concrete.
 - c. *Reinforcement* – May be required when additional strength is needed.

B. Travel Lane Standards

1. *Cross Slope*

- a. Cross slope on all streets shall be a minimum of two percent (2%) measured from street centerline to edge of asphalt or concrete. In areas of minimum centerline grade, three percent (3%) shall be considered.

- b. Temporary unpaved streets shall be crowned to three percent (3%).
- c. When existing streets are overlaid, the maximum cross slope shall not exceed four percent (4%) measured as above.

2. *Width*

Street and alley asphalt widths depend on the total number of traveled lanes and their street classification. Minimums are listed in Table three (3).

C. Shoulder Standards

- 1. *Width* – The width of improved shoulder will vary with use and location. The improved shoulder shall consist of six (6) inches of compacted road base at grade with improved roadway surface. If parking is to be allowed by the Town, eight (8) foot shoulders shall be used. If parking is not allowed, two (2) foot shoulders shall be used and the roadway shall be signed and designated no parking. The decision to allow or not to allow parking shall be made by the Town.
- 2. *Side Ditches* – Side ditches shall be used in all cut sections. All roadside swales shall be sized to handle the historical one hundred (100) year storm flows tributary to the street, unless alternate routes for the major runoff are provided. Culvert sizes shall be designed to carry the one hundred (100) year historical flows. The slope from the edge of the shoulder to the bottom of the side ditch shall not exceed three to one (3:1).
- 3. *Side Slopes* – Side slopes shall not exceed two to one (2:1), unless otherwise approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria. Where slopes equal to or greater than two to one (2:1) are used, special provisions for erosion control and revegetation shall be made. Any proposal to deviate from a maximum two to one (2:1) slope shall be accompanied by a soils study identifying the slope treatment being proposed.

D. Minimum Culvert Diameters

- 1. *Size* – All culverts installed shall be sized to handle the one hundred (100) year (historical) storm flows. The minimum allowable culvert size shall be twelve (12) inches for driveways and eighteen (18) inches for culverts crossing streets or alleys. Flared end sections shall not be used unless otherwise specified by the Public Works Director.
- 2. *Cover* – Minimum cover over all culverts shall be twelve (12) inches from top of pipe to finish road grade for all culverts crossing public streets or alleys, and six (6) inches for private driveways, unless otherwise approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria. Additional cover may be required for larger culverts in accordance with the manufacturer's recommendations. Insulation may be required by the Town in cases where freezing may be a concern. Where needed for additional strength a concrete cover may be required over culverts.

3. *Type* – For all drainage systems, smooth walled high density polyethylene (HDPE) shall be used.

E. Retaining Walls

Where necessary to meet required side slope grades, walls may be utilized.

1. *Height* – Retaining walls may not exceed six (6) feet in height. If a greater height is needed, the wall must be stepped in maximum six (6) foot increments with a minimum four (4) foot shelf.
2. *Location* – Retaining walls may not be located closer than ten (10) feet from the traveled lanes (maximum separation is desired).
3. *Design* – All retaining walls over four (4) feet in height must be designed by a Colorado-licensed Civil Engineer, and are subject to Town review and approval.
4. *Materials* – the Town should be consulted prior to choosing which type of retaining wall materials will be utilized. The Town may specify which type to use since the Town will assume ownership and maintenance once constructed and accepted.
5. *Adequate ROW and Easements* - Walls shall be designed such that adequate right-of-way or easements exist or shall be provided to allow for proper maintenance and possible future replacement of all walls.

F. Guardrail

Guardrail requirements shall be as specified in the State Highway Roadway Design Manual, latest edition. Corten steel shall be used for all guardrail installations.

G. Signs

All signs and street markings shall be designed, constructed, and placed in accordance with the Manual of Uniform Traffic Control Devices (MUTCD), latest edition, of a material and installation approved by the Town.

H. Barriers

No barriers of any sort shall be allowed within the Town ROW (including all areas within ten (10) feet of roadway pavement or shoulders or curb/pan) unless approved by the Town. Landscape improvements including medians may be considered as long as adequate measures are made to protect the traveling public (such as curbs). Refer also to Town Code 127-6, prohibiting Obstructions of Public Way.

I. Pavement Design

1. *General* – Design of the pavement structure is the determination of the thickness of sub-base, bases, and surfacing to be placed over sub grade soils. The basic purpose is the selection of the most suitable, available materials and their most advantageous use.

Pavements shall be designed for a twenty (20) year life and designed by a Colorado-licensed Civil Professional Engineer.

2. *Types of Surfacing* – Bituminous pavement (asphalt) surfacing shall be used for streets in the Town of Frisco.
3. *Thickness Design* – Thickness design shall be in accordance with the procedures as outlined in the CDOT Design Guide, latest edition. All new streets constructed in the Town of Frisco must be designed per these methods or other methods acceptable to the Public Works Director.
4. *Minimum Base and Asphalt Thickness* – The pavement design shall be used unless the designed thickness is less than the minimum allowable according to the street classification found in Table three (3).
5. *Plant Mix Pavement and Base Course* – All asphalt shall be SX (PG 58-28), one half (½) inch aggregate superpave. All road base shall be CDOT Class Six (6) for areas being paved or hard surfaced (concrete) and either Class 4 or Class 5 for deeper fills. These requirements may be modified by a geotechnical report if approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.
6. *Pedestrian / Bicycle Facilities Pavement Section* – Minimum section for pedestrian sidewalk and multi-use path shall be either four (4) inch concrete with three (3) inch compacted road base on a prepared sub-grade or three (3) inch asphalt with six (6) inch road base on prepared sub-grade.
7. *Fabrics* – The use of geotechnical fabric within the pavement section is prohibited. Fabric may be considered where appropriate, in areas of fill or areas with special soils.

IV. Other Elements of Design

A. Intersection

1. *Minimum Angle of Intersection* – Intersections shall approximate right angles as closely as possible. The minimum angle allowed for any type of intersection shall be seventy (70) degrees.
2. *Radius* – All intersections shall have a paved radius on all four corners with minimum radius as shown in Table 1.
3. *Cross Street Standard* – All local streets intersecting a Major Arterial Street shall be constructed to Collector Street standards for a distance of two hundred (200) linear feet as measured from the edge of Arterial right-of-way. This shall include street width (asphalt and base) and right-of-way width.
4. *Grades* – Grades at intersections shall not exceed two percent (2%) at any point for one hundred (100) feet from the edge of the intersecting street, nor shall the grade exceed four percent (4%) overall for the two hundred (200) feet from the same edge. Maximum grades may be increased beyond five percent (5%) for short distances in extreme terrain when approved by the Public Works Director in accordance with

Section VI, Waivers to These Criteria. The through street may be up to a four percent (4%) grade through the intersection, although flattening the through street at the intersection is recommended.

5. *Separation* – Intersections shall not occur at less than a three hundred (300) linear foot separation wherever possible. In no case shall two intersections be within two hundred (200) linear feet (edge to edge of ROW) of each other. Opposing intersections (4 way) are required when intersecting with a major road and certain intersections of two collector streets. T-type intersections have shown to be far safer than cross-type and shall be considered in the design of residential subdivisions.
6. *Intersection at a Curve* – Intersections should not be placed on a curve unless all applicable sight and stopping distances are complied with.
7. *Intersection Sight Distance* – For specifications on Intersection Sight Distance, refer to Section II.A. Sight Distance.

B. Cul-de-Sacs, and Dead Ends

1. *Cul-de-Sacs* – Cul-de-Sacs shall be permitted provided that they have a right-of-way diameter of at least one hundred fifty (150) feet; and an improved surface paved minimum ninety-nine (99) feet outer diameter and maximum forty-five (45) feet inner diameter. Maximum length of Cul-de-Sacs shall be determined by density of the development. In no case shall the maximum length exceed six hundred (600) feet.

Dead-End Streets – Dead-end streets (except for cul-de-sacs) shall be prohibited unless they are designed to connect with future streets on adjacent land that has not been platted. In such case a temporary turnaround of at least eighty (80) foot diameter shall be provided. Use of a temporary hammerhead type turn may be considered in special cases if approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.

C. Parking Spaces

Size of Parking Stalls:

1. *30 degree to 90 degree* – The minimum size for this type of parking shall accommodate an eighteen and a half (18.5) foot by nine (9) foot rectangle within the stall.
2. *Parallel Spaces* – Shall be twenty-five (25) foot as measured along the street and eight (8) foot wide.
3. *Handicap Stalls* – Shall be a minimum of 8 foot wide by eighteen and a half (18.5) foot long, with a five (5) foot accessibility lane or eight (8) foot accessibility lane for vans. Handicap stalls placed on an angle shall accommodate an eight (8) foot wide by eighteen and a half (18.5) foot rectangle within the stall and accessibility lane as measured perpendicular to the stall. An acceptable route in compliance with ADA standards shall be provided from handicap stalls to businesses being served.

4. All parking spaces and adjacent drive aisles shall not exceed four percent (4%) grade in any direction.

D. Driveways

1. *General* – The term driveway or access are interchangeable terms and refer to the specific locations granted to properties adjacent to Town ROW for the purpose of accessing the property through the Town ROW from Town streets for all purposes including parking areas, dumpster enclosures, garages, etc.
2. *Intent of Requirements* – Driveway spacing and widths have been established for aesthetic, maintenance purposes, and safety reasons.
3. *Requirements* – A combination of these factors and others such as sight distance and safety has governed the following requirements:
 - a. *Proximity to Intersection* – Driveways accessing Town ROW near an intersection of a Major Arterial (Summit Blvd.) shall be a minimum of fifty (50) feet and for all other street classifications shall be a minimum of thirty-five (35) feet from the intersecting street ROW as measured from the nearest edge of the driveway. When this spacing cannot be achieved (for example, due to topography or lot size) effort shall be made to place the entrance as far from the intersecting ROW as possible.
 - b. *Access to Single Family* – Only one access will be allowed to single family residences. More than one access will be considered on lots with more than one street frontage when approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.
 - c. *Parking Access* – Parking areas on private property shall be accessed by a driveway through Town ROW from the street. Driveway widths shall be in accordance with (3.e) of this section.
 - d. *Alleys* – Alleys may be used for access to an adjacent property subject to approval of the Public Works Director in accordance with Section VI, Waivers to These Criteria.
 - e. *Width of Driveways* – Driveway width shall be as set forth below and is measured within Town ROW from the ROW line to the edge of pavement, with an allowable three (3) foot angled or radial taper. All access and drive aisles are also subject to minimum widths as specified by the local fire authority.

f. Single Family Homes	g. 9 foot Minimum	h. 20 foot Maximum
i. Duplexes or Multi-Units	j. 9 foot Minimum	k. 20 foot Maximum
l. Commercial/Business	m. 12 foot (One-Way)	n. 24 foot (Two-Way)

- o. *Driveway Spacing* – No two driveways connecting to a public or private street, alley or highway shall be within thirty (30) feet of one another measured from edge of driveway to edge of driveway within the Town ROW or private street ROW. When this spacing cannot be achieved (for example, due to topography or lot size) effort shall be made to place the driveways as far apart as possible and must be approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.
- i. When a new driveway is requested adjacent to a vacant lot, fifteen (15) foot spacing from that property line may be required. The intent is not to restrict the adjacent property owner on the location of their driveway due to the thirty (30) foot separation required.
- p. *Angle of Intersection* – All driveways shall intersect the access street at ninety (90) degrees unless otherwise approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.
- q. *Grade* – Driveways up to eight percent (8%) in grade, with steeper grades subject to approval from the Public Works Director. Safety issues for both the driveway users and adjacent street users will be considered.
- r. *Drainage* – Facilities shall be graded for proper drainage so that surface discharge is channeled to a natural or improved drainage way without causing nuisance or damage to other properties or the improvements thereon. Proper drainage shall include the installation of such systems, including culverts and pans as necessary, which will protect all affected public rights-of-way. Drainage off driveways may not be directed onto Town street pavement.
- s. *Access to Collector and Major ~~or~~ Arterial Streets* – No driveways will be allowed onto collector or major arterial streets unless no other access to the lot exists. No new subdivisions shall be approved on which driveways must exit onto major arterial or collector streets, unless approved by the Town.
- t. *Heated Driveways* – Private driveways may be heated, excluding that portion extending into Town ROW to match the road edge. However, drainage from a heated driveway may not be discharged onto the Town street pavement; it must either be separated by a pan, or stop four (4) feet short of the Town street pavement.
- u. *Exemption and Conformity* – Driveways which are to be repaved (existing driveways) can be done to the previous width. Existing gravel driveways which are to be paved shall conform to these requirements.
- v. *Dumpster Access* – Dumpster enclosures shall be accessed through the same driveway allowed for access to the property. Additional width will not be allowed for the access to the dumpster enclosures adjacent to driveways within Town rights-of-way. Dumpster enclosures shall include a concrete floor, minimum of six (6) inches thick, including the area in front of the dumpster where the front wheels of a trash truck would sit while emptying the dumpster.

- w. *Main Street Access* – Driveways that directly access Main Street are discouraged and only permitted by the Public Works Director in accordance with Section VI, Waivers to These Criteria.

E. Pedestrian/Bicycle Facilities

Minimum sidewalk width shall be six (6) feet.

Minimum multi-use pathway width shall be ten (10) feet wide with one foot compacted road base shoulders six (6) inches thick on each side.

Minimum section for both shall be either four (4) inch concrete with three (3) inch compacted road base on a prepared sub-grade or three (3) inches asphalt with six (6) inches road base on a prepared sub-grade.

Concrete shall comply with requirements in SECTION III, A, 5.

Multi-use pathways shall have handicap ramps in compliance with current ADA standards.

Reduced widths for multi-use pathways may be considered where ROW widths are limited.

Detached sidewalks and multi-use paths are preferred where ROW and topography allows. If sidewalks and pathways are attached then the roadway they should be separated by either a pan or curb and gutter to provide either vertical or horizontal separation.

The Town of Frisco *Trails Master Plan*, Chapter 3 Paved Trails Typologies and Standards, should be reference as a guide to design of pedestrian and bike facilities. Specifications for design shall follow the criteria outlined in this section.

F. Temporary Unpaved Streets

Under certain circumstances, the Public Works Director may allow either a delay in final paving of a new street, or a delay in the final lift, until the following construction season to allow sufficient time for roadway stabilization or until a certain percentage of build out occurs. In those cases, all street construction up to and including base work shall be completed. Unpaved streets shall be graded to three percent (3%) crown and then re-graded and compacted as required by these standards prior to paving. Unpaved streets will not be accepted by the Town for maintenance purposes.

G. Half Streets

Half streets arise in attempting to locate street centerlines on the perimeters of subdivisions for land parcels. Constructions of half streets are not allowed in the Town of Frisco.

H. Erosion Control

Erosion control shall be in accordance with Exhibit A, the Northwest Colorado Council of Government Water Quality Protection Standards as modified for the Town of Frisco, attached to these Street Design Criteria, and the Frisco Town Code, Section 180, Article 6. The Frisco Town Code shall supersede in the event of any conflict between the two documents. Any deviation from these requirements must be approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria.

I. Traffic Signage and Traffic Calming

All traffic related signage on Town Streets or ROW shall comply with the Manual of Uniform Traffic Control Devices (MUTCD) as to size, materials and installation. Traffic Calming, including items such as speed bumps, speed humps, speed dips, and other forms of traffic calming shall be approved by the Public Works Director prior to design. Any such design must include proper consideration to street maintenance, design speed, traffic impacts including emergency vehicles, noise impacts, and neighborhood impacts.

V. Other

All new infrastructure given to the Town shall include a two (2) year warranty with appropriate security provided.

All construction plans shall include or refer to the Town of Frisco Construction General Notes, attached as Exhibit B to this document.

No barriers of any sort shall be allowed within the Town ROW (asphalt or shoulders) of any new public street, except curb and gutter, guard rails, street signs or retaining walls as approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria. Landscaped median features properly designed and approved by the Public Works Director in accordance with Section VI, Waivers to These Criteria are excepted.

Traffic control devices, such as speed bumps and humps, shall be approved by the Public Works Director prior to design. Any such design allowed must include proper design based on speeds and potential impacts to traffic and adjacent neighbors.

Any new subdivision shall have three (3) foot concrete drain pans for drainage and delineation on both sides of the roadway. If minimum grades cannot be achieved, other engineered alternatives may be considered.

Any improvements required on any portion of an existing street which serves as the access for a new development shall be designed and paid for by the developer of that new development. New and existing roadways shall be designed or improved to handle the additional traffic volume generated.

Prior to acceptance of any new street, the sub-divider of developer shall request, in writing, inspection and acceptance by the Town and provide to the Town all soils and materials testing results. The Public Works Director shall inspect the street and notify the developer in writing of acceptance or non-acceptance so the developer may correct

them and re-apply. Until such time as the streets are accepted, the developer shall be fully responsible for all maintenance, including snow removal, for the street.

Request for acceptance may only be made between April 15th and October 15th.

New streets accepted by the Town shall be warrantied for a period of two (2) years from the date of acceptance. The Town shall inspect the streets prior to the end of the warranty period and notify the developer of any deficiencies identified.

Damage to Town property (e.g. pavement, signs, ground cover) as a result of construction activities shall be the responsibility of the developer/owner to repair or replace the damaged Town property at their expense to the satisfaction of the Town.

VI. Waivers to These Criteria

A. Summary

These design criteria as presented are intended to aid that design of the Engineer in preparation of plans and specifications for the Town of Frisco, including minimum standards where required. As with any set of design criteria, occasions will arise in which the criteria or minimums are inappropriate. In these cases, a waiver to these criteria may be considered by the Town, but should not be assumed.

B. Application

An application for a waiver to these criteria shall be filed with the Public Works Director. The waiver application shall be reviewed by the Public Works Director and shall only be approved upon a determination that:

1. Failure to grant the waiver would result in practical difficulty for the applicant or would make the project economically unfeasible for the applicant.
2. Granting the waiver would facilitate project maintenance; and
3. Granting the waiver would not be detrimental to public health, safety and welfare.

C. Appeals

Any decision made by the Public Works Director may be appealed in accordance with Town of Frisco Unified Development Code, Section 180-2.7.1, Appeals. For purposes of appeal under said section, reference to the Community Development Director shall be replaced by reference to the Public Works Director.

VII. Specifications

All construction methods and materials shall be in accordance with the Colorado Department of Transportation, Roadway Design Guide, and Construction Specifications, latest editions. In addition, testing in accordance with the same specifications shall also be performed.

VIII. Detailed Design Requirements

Design Drawing Requirements

All construction plans, pertaining to this Street Design Criteria, designed for construction in the Town of Frisco must meet the following criteria:

1. Twenty-four (24) in by thirty-six (36) inch blue line prints.
2. One (1) inch = fifty (50) feet horizontal and one (1) foot = five (5) foot vertical or one (1) foot = twenty (20) foot horizontal and one (1) inch = two (2) foot vertical.

(Larger scales will be considered.)

Any construction plans, pertaining to this Street Design Criteria, designed for construction in the Town of Frisco shall contain the following information:

1. Scale.
2. North arrow.
3. Plan view of all streets.
4. Grades.
5. Profiles or existing ground and proposed street at centerline (existing ground dashed).
6. Length of vertical curves, BVC's EVC's and PIV's.
7. Culverts including location, size and slope, and minimum cover.
8. Crossspans including location, size and slope.
9. All other structures.
10. Existing and proposed utility locations and elevations.
11. Existing and proposed signage.
12. Bench Mark, located within one thousand (1,000) feet of the street, tied to USGS datum, and referenced to the Town GIS datum (**Colorado State Plane Central Zone NAD '83(92) coordinates**).
13. Horizontal curve data including radii, delta angles, bearing, distances, centerline stations at one hundred (100) foot intervals, and BC and EC stationing.
14. Right-of-way widths.
15. Street cross sections for all typical sections.

16. Street names, including all intersections.
17. Flow arrows showing direction of drainage.
18. Existing and finished grade contours, two (2) foot spacing (one (1) foot spacing may be requested for more detail in flat areas).
19. Complete design drawings for all structures, such as bridges and box culverts.
20. Stamp and signature of the Colorado-licensed Professional Engineer under whose direction the plans were prepared.
21. Soils report (where required).

**Table 1
Design Speeds**

<u>Street Type</u>	<u>Design Speed (MPH)</u> <u>(see note)</u>	<u>Minimum Centerline</u> <u>Radius</u> <u>(in feet)</u>	<u>Minimum Tangent</u> <u>Between Curves</u> <u>(in feet)</u>
LOCAL	25	75	50
COLLECTOR	35	300	150
ARTERIAL	35	300	150

NOTE: Design speed is not necessarily posted speed.

**Table 2
Intersection Design**

<u>Design Topic</u>	<u>Street Type</u>			
	<u>Alley</u>	<u>Local</u>	<u>Collector</u>	<u>Arterial</u>
Minimum Curb or Edge of Asphalt Radius (in feet)	25	30	30	40

**Table 3
Street Classifications/Design Specifications**

<u>Street Type</u>	<u>Minimum Dedicated</u> <u>ROW (in feet)</u> <u>(see note 1)</u>	<u>Minimum Paved</u> <u>Width (in feet)</u>	<u>Minimum Allowable</u> <u>Base and Asphalt</u> <u>(see notes 2, 4)</u>
ARTERIAL	100	36 foot paved	4 inch asphalt 5 inch base
COLLECTOR	80	36 foot paved	3 inch asphalt 4 inch base
LOCAL (COMMERCIAL)	60	30 foot paved	4 inch asphalt 5 inch base
LOCAL (RESIDENTIAL)	60	24 foot paved	3 inch asphalt 4 inch base
ALLEYS	40	20 foot paved	3 inch asphalt 4 inch base
CUL-DE-SACS	75 radius	45 foot radius	3 inch asphalt 4 inch base

NOTES:

1. Required right-of-way may be modified in some cases by the Public Works Director.
2. Asphalt mat to be placed in two (2) lifts unless total pavement design is three (3) inches, in which case one lift may be considered.
3. Paving fabric will not be allowed, geotechnical fabric preferred depending on soils testing.

EXHIBIT A

(Attached to and made a part of that Lease dated March 12, 2019 naming the Town of Frisco, Colorado as Landlord and The Island Grill, Inc., as Tenant)

DESCRIPTION OF THE PREMISES

The Island Grill Lease Area is defined as the food and beverage building. Storage is allowed in the northern most rear storage closet on bathroom building and a portion of the southern most utility room on rear of bathroom building. Non exclusive use of front Lund house deck is allowed for over-flow food and beverage service.

AN IMPROVEMENT LOCATION CERTIFICATE FOR
ISLAND GRILL
FRISCO MARINA
 TOWN OF FRISCO
 SUMMIT COUNTY, COLORADO

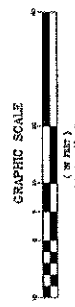
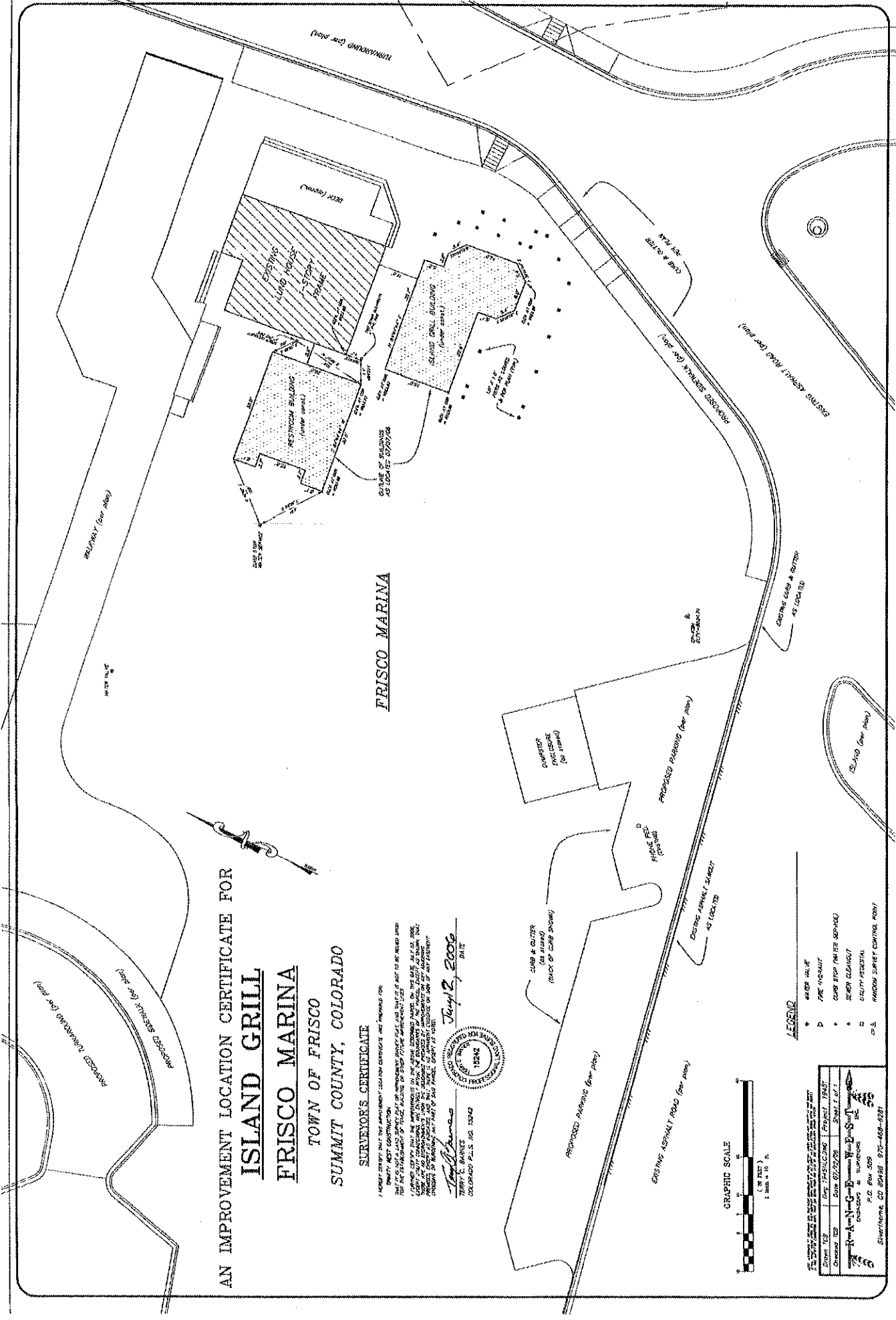
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE IMPROVEMENT LOCATION CERTIFICATE AND PROPOSED PLAN
 FOR THE IMPROVEMENT OF THIS PUBLIC HIGHWAY OR ROAD, AND THAT THE IMPROVEMENT
 LOCATED THEREON, ARE IN ACCORDANCE WITH THE PROVISIONS OF THE COLORADO
 CONSTITUTION AND STATUTES, AND THAT THE IMPROVEMENT IS NECESSARY FOR THE
 PUBLIC USE AND BENEFIT, AND THAT THE IMPROVEMENT IS IN ACCORDANCE WITH
 THE PROVISIONS OF THE COLORADO CONSTITUTION AND STATUTES, AND THAT THE
 IMPROVEMENT IS NECESSARY FOR THE PUBLIC USE AND BENEFIT.

TERRY C. BAUNIS
 COLORADO P.L.S. NO. 10343
 DATE July 2, 2006



FRISCO MARINA



LEGEND

- WATER WALE
- D FIRE HYDRANT
- CURB STOP (METER SERVICE)
- STOP SIGN/STOP
- UTILITY PEGS
- 3 RANDOM SURVEY CONTROL POINT

Drawn by	Eng. 1545/6/2006	Project	19457
Checked by	Date 07/24/06	Sheet	1 of 1
TERRY C. BAUNIS SURVEYOR P.L.S. NO. 10343 SUMMIT COUNTY, COLORADO			



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: TOM HOGEMAN, MARINA GENERAL MANAGER
RE: RESOLUTION 19-11, APPROVING AN AGREEMENT WITH MEECO SULLIVAN FOR THE PURCHASE OF A NEW DOCK AT THE FRISCO BAY MARINA WITHOUT A COMPETITIVE BIDDING PROCESS
DATE: MARCH 12, 2019

Summary: Staff is requesting approval of the attached sole source purchase for a marina dock system from Meeco Sullivan as part of the Marina Master Plan implementation.

Background: The Frisco Town Council adopted the Marina Master Plan by Resolution 18-11 on June 26, 2018. The master plan includes the lengthening and reconfiguring of the current walkway. These changes are included in the improvements in Phase One of the master plan. Phase One construction is currently out to bid for a general contractor at this time with proposals due March 11, 2019. A general contractor will not be responsible for such dock purchases because this is a specialized field with the docks being made off-site, to Frisco Bay Marina specs, and then built and delivered by a specific dock company. Different companies have different structural designs and connection methods that would make connecting to the existing docks difficult, if not impossible.

Nearly 90% of the docks at the marina were supplied by Meeco Sullivan. These docks are quality docks that fit seamlessly with one another. The new dock sections will need to fit together with the old sections to create one safe and smooth walkway. Purchasing the new dock sections from the same manufacturer of the current docks will ensure compatibility and ease of construction.

Staff Analysis: Council is authorized to approve contracts without a competitive bid process if, in their opinion, such goods or services are best obtained from a single or sole source. Due to the fact that the majority of the docks at the Frisco Bay Marina are Meeco Sullivan docks and that the product is an exceptional product, it is staff's recommendation to purchase this additional dock from Meeco Sullivan. This dock will integrate seamlessly with the other dock products. Their quote of \$593,489.00 is fair and competitive within the industry.

Recommendation: On that basis, staff recommends the Town Council make a motion to approve the attached Resolution, "APPROVING AN AGREEMENT WITH MEECO SULLIVAN ("MEECO SULLIVAN") FOR THE PURCHASE OF A NEW DOCK AT THE FRISCO BAY MARINA WITHOUT A COMPETITIVE BIDDING PROCESS."

Financial Impact: Passage of the recommended motion entering into a purchase with Meeco Sullivan will result in a total cost of \$593,489, which has been budgeted in the Marina Fund, Capital Projects (90-9000-4444). Total budget for the dock relocation/upgrades is \$700,000. This amount includes changes to the fuel dock, which is not included in this proposal as Meeco Sullivan does not operate fuel systems. A separate agreement will be recommended at a later date for changes to the fuel system. The agreement with Meeco Sullivan is fair and reasonable in light of the market for similar goods (and related services).

This purchase request was initially brought before Council on February 26, 2019, in the amount of \$513,281, "plus installation costs." In response to the discussion with Council, staff worked with Meeco Sullivan staff to further refine all costs associated with this purchase. The new total cost of \$593,489 is reflected of all costs associated with this marina dock system including engineered stamped plans and installation.

Town of Frisco staff will move all existing docks into place once the walkway is built.

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager/Recreation Director
Nancy Kerry, Town Manager - Approved
Bonnie Moinet, Finance Director - Approved

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 19-11**

A RESOLUTION APPROVING AN AGREEMENT WITH MEECO SULLIVAN (“MEECO SULLIVAN”) FOR THE PURCHASE OF A NEW DOCK SYSTEM AT THE FRISCO BAY MARINA WITHOUT A COMPETITIVE BIDDING PROCESS.

WHEREAS, under section 9-3 of the Town Code, the Town Council is authorized to approve a contract for goods or services without a competitive bidding process when, in the opinion of the Council, the goods or services are best obtained from a single source due to specialized skills, knowledge or experience, unique and relevant experience, knowledge of the Town or exceptional qualifications or reputation in the field; and

WHEREAS, the Frisco Bay Marina (the “Marina”) desires to purchase a new dock system that will be compatible and integrate seamlessly with its existing docks and dock systems; and

WHEREAS, Meeco Sullivan has previously been engaged by the Town to design, build and install custom-made docks at the Frisco Bay Marina, and about 90% of the existing docks at the Marina have been provided by Meeco Sullivan; and

WHEREAS, as a result of Meeco Sullivan’s previous work in designing and building custom docks for the Marina, the Town Council finds that Meeco Sullivan has specialized knowledge and experience that is unique and relevant to the Town and to the Marina’s docks and docking systems and, accordingly, the new dock system is best obtained from a single source without a competitive bidding process; and

WHEREAS, the Town Council finds that the price set forth in the attached agreement with Meeco Sullivan is fair and reasonable, relative to the general market prices for the goods and services to be provided by Meeco Sullivan.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

The attached agreement between the Town and Meeco Sullivan, is hereby approved and the Town Mayor and Town Clerk are hereby authorized to execute the same on behalf of the Town of Frisco.

INTRODUCED, READ AND ADOPTED THIS 12TH DAY OF MARCH, 2019.

Town of Frisco, Colorado:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

CONTRACT FOR GOODS AND/OR SERVICES

THIS AGREEMENT ("Agreement"), made this 12th day of March 2019, between the Town of Frisco, a Colorado home rule municipal corporation, hereinafter referred to as "FRISCO" and Meeco Sullivan, a Limited Liability Company, as an independent contractor, hereinafter referred to as "CONTRACTOR," provides as follows:

ARTICLE I SCOPE OF SERVICES

Section 1.1 Services: CONTRACTOR agrees to perform the work, personal services and/or furnish the necessary equipment, supplies or materials in accordance with and/or as described in Attachment A hereto, hereinafter referred to as the "Project." Attachment A hereto is hereby incorporated by reference and made a part of this Agreement.

Section 1.2 Scope of Services: FRISCO agrees to retain CONTRACTOR to complete the Project. CONTRACTOR shall commence work upon direction to proceed and complete the Project on or before June 30, 2019. Additional services beyond those listed in Attachment A, if requested, shall be provided only when authorized in writing by FRISCO.

Section 1.3 Independent Contractor: CONTRACTOR shall at all times control the means and manner by which CONTRACTOR performs the work, subject to FRISCO's right to monitor, evaluate and improve such work. CONTRACTOR shall at all times be and act as an independent contractor and not as an employee of FRISCO.

Section 1.4 Warranty of Contractor: CONTRACTOR warrants that title to all services, materials and equipment covered and paid for under this Agreement will pass to FRISCO either by incorporation in the Project or upon the receipt of payment by CONTRACTOR, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no services, materials or equipment paid for under this Agreement will have been acquired by CONTRACTOR, or by any other person performing services 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 CONTRACTOR or such other person.

ARTICLE II ADMINISTRATION OF THIS AGREEMENT

Section 2.1 Project Performance: In consideration of the compensation provided for in this Agreement, CONTRACTOR agrees to perform or supply the Project, in accordance with generally accepted standards and practices of the industry, and warrants all materials incorporated in the Project to be free from defect of material or workmanship and conform strictly to the specifications, drawings or samples specified or

furnished. This Section 2.1 shall survive any inspection, delivery, acceptance or payment by FRISCO.

Section 2.2 Oversight: All of the work associated with the Project shall be performed under the direction of Tom Hogeman, General Manager, Frisco Bay Marina; it is expressly understood and agreed that some of the work may have commenced prior to the formal execution of this Agreement, in which event such work is incorporated into the Project and is deemed to have been and is authorized by this Agreement.

Section 2.3 Ownership and Use of Documents:

(a) Any documents prepared by CONTRACTOR, and copies thereof furnished to other parties are for use solely with respect to this Project. They are not to be used by any other contractor or subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of FRISCO. Other contractors and subcontractors are authorized to use and reproduce applicable portions of the documents prepared by the CONTRACTOR appropriate to and for use in the execution of their work under this Agreement. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the documents prepared by CONTRACTOR.

(b) CONTRACTOR, and any subcontractor or supplier or other person or organization performing or furnishing any work for the Project under a direct or indirect contract with FRISCO (i) shall not have or acquire any title to or ownership rights in any of any documents (or copies of documents) prepared in connection with the Project by a design professional and (ii) shall not reuse any of such documents or copies for extensions of the Project or any other project without written consent of FRISCO and the design professional and specific written verification or adaption by the design professional.

(c) Notwithstanding the provisions of Sections 2.3(a) and (b) above, FRISCO reserves the right to utilize any documents generated in connection with the Project by CONTRACTOR for other projects, provided that CONTRACTOR is not held liable for future project applications other than the Project described pursuant to this Agreement. FRISCO shall not convey any such documents generated by CONTRACTOR to a third party or use any such documents in a manner adverse to the CONTRACTOR.

Section 2.4 Insurance:

(a) CONTRACTOR agrees to procure and maintain, at its own cost, the following policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by CONTRACTOR under this Agreement or arising as a result of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law.

(b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall name FRISCO, its employees and agents as additional insureds and shall include the following provisions: (i) severability of interest; (ii) waiver of subrogation; and (iii) cross liability endorsement.

(c) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of SIX HUNDRED THOUSAND DOLLARS (\$600,000) each accident, SIX HUNDRED THOUSAND DOLLARS (\$600,000) disease - policy limit, and SIX HUNDRED THOUSAND DOLLARS (\$600,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this Section 2.4(c).

(d) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of CONTRACTOR's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If CONTRACTOR has no owned automobiles, the requirements of this Section 2.4(d) shall be met by each employee of CONTRACTOR providing services to FRISCO under this Agreement.

(e) The insurance policies required by Sections 2.4(a), (b) and (d) shall name FRISCO, its employees and agents as additional insureds. No additional insured endorsement to a policy shall contain any exclusion for bodily injury or property damage arising from completed operations.

(f) Every policy required under this Section 2.4 shall be primary insurance, and any insurance carried by FRISCO, its officers, or its employees, or carried by or provided through any insurance pool of FRISCO, shall be excess and not contributory insurance to that provided by CONTRACTOR. CONTRACTOR shall be solely responsible for any deductible losses under any policy required above. All insurance policies must be written by a reputable insurance company with a current Best's Insurance Guide Rating of A- or better and authorized to do business in the State of Colorado.

(g) Prior to commencement of this Agreement, CONTRACTOR shall provide FRISCO with a certificate of insurance completed by CONTRACTOR's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide

that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to FRISCO. The completed certificate of insurance shall be sent to:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Bonnie Moinet

(h) CONTRACTOR shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of CONTRACTOR's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of CONTRACTOR to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which FRISCO may immediately terminate this Agreement, or at its discretion FRISCO may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by FRISCO shall be repaid by CONTRACTOR to FRISCO upon demand, or FRISCO may withhold the cost of the premiums from any monies due to CONTRACTOR from FRISCO.

(i) The parties hereto understand and agree that FRISCO is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to FRISCO, its officers, or its employees.

Section 2.5 Indemnification:

(a) CONTRACTOR shall indemnify and hold harmless FRISCO and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to copyright infringement, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any person described in this Section 2.5(a).

(b) In any and all claims against FRISCO or any of its agents or employees by any employee of CONTRACTOR, any subcontractor of CONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, the indemnification obligation under this Section 2.5 shall not be

limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's or workman's compensation actions, disability benefit acts or other employee benefit acts.

Section 2.6 Subcontractor: CONTRACTOR shall, as soon as practicable after the signing of this Agreement, notify FRISCO in writing for FRISCO's approval, of any subcontractors who may be involved in the Project and the general scope of work to be performed by each subcontractor.

Section 2.7 Termination of Agreement:

(a) This Agreement may be terminated by either party upon thirty (30) days' written notice, provided that such termination is based upon a substantial failure by the other party to perform in accordance with the terms in this Agreement. Failure to proceed in a timely manner, and/or deviation from the aforesaid Agreement without prior written approval of FRISCO, shall constitute authority for issuance of a termination notice, except wherein circumstances beyond the control of CONTRACTOR shall warrant alteration, adjustment or deviation from this Agreement. In the event of termination, FRISCO will pay CONTRACTOR for all services performed to date of termination. If payment is otherwise due upon completion, FRISCO will pay CONTRACTOR for the pro rata value of the completed portion of the Project that will be incorporated into the Project. FRISCO will require the release of all lien rights as a condition of such payment.

(b) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, FRISCO's obligations under this Agreement are subject to annual appropriation by the Town Council of FRISCO. Any failure of a Town Council annually to appropriate adequate monies to finance FRISCO's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to CONTRACTOR of any failure to appropriate such adequate monies.

Section 2.8 Binding Effect: FRISCO and CONTRACTOR each bind itself, its successors and assigns to the other party to this Agreement with respect to all rights and obligations under this Agreement. Neither FRISCO nor CONTRACTOR shall assign or transfer its interest in this Agreement without the written consent of the other.

Section 2.9 Notice and Communications: Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and/or e-mail addresses are provided for convenience only.

FRISCO:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Diane McBride
Electronic mail:
dianem@townoffrisco.com

CONTRACTOR:

Meeco Sullivan
1501 E. Electric Avenue
McAlester, OK 74501
Attn: Steve Shoup
Electronic mail:
sshoup@meecosullivan.com

ARTICLE III **RESPONSIBILITIES OF FRISCO**

Section 3.1 Project Materials: FRISCO shall make available data related to the Project, including design specifications, drawings and other necessary information. Data so furnished to CONTRACTOR shall be furnished at no cost, and shall be returned to FRISCO at the earliest possible time.

Section 3.2 Access to Property and Records: FRISCO shall provide CONTRACTOR with access to public property as required and necessary to complete the contract. To the extent required by law, FRISCO and CONTRACTOR agree to make this Agreement and any related records available for public disclosure pursuant to any open records law, including, without limitation, the Colorado Open Records Act, C.R.S. §§ 24-72-101, *et seq.* CONTRACTOR agrees to hold FRISCO harmless from the disclosure of any records that FRISCO reasonably believes it is legally required to disclose.

Section 3.3 FRISCO's Representative: FRISCO shall designate, in writing, a representative who shall have authority to act for FRISCO with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define FRISCO's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONTRACTOR's services.

Section 3.4 Verbal Agreement or Conversation: No verbal agreement or conversation with any officer, agent or employee of FRISCO, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever under the terms of this Agreement.

ARTICLE IV
COMPENSATION FOR SERVICES

Section 4.1 Compensation: CONTRACTOR shall be compensated for services as described in Attachment A hereto at a total cost of \$593,489. The additional optional pricing from CONTRACTOR includes stamped drawings, additional anchors, stainless steel cables, and additional daily rates for the installation crew. Only the stamped engineered drawings are included in the total cost of this contract. Additional anchors, stainless steel cables and additional daily rates for the installation crew are not included. Attachment A hereto is hereby incorporated by reference and made a part of this Agreement.

Section 4.2 Payment: FRISCO shall pay CONTRACTOR monies due under this Agreement within thirty (30) days after invoice date, provided such amounts are not in dispute or the subject of setoff.

ARTICLE V
PROHIBITION ON EMPLOYING OR CONTRACTING WITH ILLEGAL ALIENS

Section 5.1 The CONTRACTOR hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the "Programs") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Section 5.2 The CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform the work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Section 5.3 The CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

Section 5.4 The CONTRACTOR is prohibited from using the Programs procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

Section 5.5 If the CONTRACTOR obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the CONTRACTOR shall: (a) notify the subcontractor and the

FRISCO within three (3) days that the CONTRACTOR has actual knowledge that the subcontractor is knowingly employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, required pursuant to C.R.S. § 8-17.5-102(2)(III)(A), the subcontractor does not stop employing or contracting with the illegal alien; except that the CONTRACTOR shall not terminate the contract with the subcontractor 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.

Section 5.6 The CONTRACTOR shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

Section 5.7 Any violation of the provisions of this paragraph shall be deemed to be a material breach of this Agreement and FRISCO may immediately terminate this Agreement for cause based on such violation. If this Agreement is so terminated, the CONTRACTOR shall be liable for actual and consequential damages to FRISCO pursuant to C.R.S. § 8-17.5-102(3) and FRISCO shall notify the office of the Secretary of State of such violation/termination.

ARTICLE VI **MISCELLANEOUS**

Section 6.1 Colorado Law: This Agreement is to be governed by the laws of the State of Colorado.

Section 6.2 Amendments; Change Orders: This Agreement may only be amended, supplemented or modified in a written document signed by both parties.

Section 6.3 Counterparts: This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

Section 6.4 No Third Party Benefit: This Agreement is between FRISCO and CONTRACTOR and no other person or organization shall be entitled to enforce any of its provisions or have any right under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement the day first written above.

FRISCO

By: _____
Name: _____
Title: _____

Attest:

Deborah Wohlmuth, Town Clerk

CONTRACTOR

By: _____
Name: _____
Title: _____

ATTACHMENT A
SCOPE OF WORK



March 5, 2019

Via Email: tomh@townoffrisco.com

Mr. Tom Hogeman
Frisco Bay Marina
902 E. Main St.
Frisco, CO 80443

Re: Frisco Bay Marina – Walkway, Fuel Dock, and Dock A

Dear Mr. Hogeman:

We are pleased to provide the following quote per Meeco Sullivan, LLC Plan # 6746U, sheets 1 through 4, dated February 19, 2019

Description of Design

- (1) 6' x 100' Aluminum ADA gangway (100# Liveload)
- (1) 8' x 474' walkway, (3) 8' x 20' platforms
- Installation for gangway, platforms, and walkway only
- New fuel dock – (12) 24' x 24' open slips, (1) 12' x 56' partially covered fuel platform
- New Dock A – (4) 30' x 30' open slips, (4) 30' x 40' open slips

Description of Materials

- Galvanized Steel Frames** - manufactured by Meeco Sullivan, LLC
- 12" Deep galvanized steel frame - proven, strong, low maintenance
- Unique box truss frame design - creates 100% full load transfer
- Main structural frame members shall be a minimum of 2" x 2" x 1/4" angle - superior system performance. Bolted connection in horizontal plane - added strength for vertical/wave movement

Concrete Decking – Headpier and Fingers

- Exposed rock aggregate finish - attractive
- Internal reinforcement - added strength, added safety
- 28 Day strength of 4000 PSI - exceeds industry standards
- 2' x 3' x 1 1/2" Thick removable panels - ready access to utilities
- Decking shall be installed with 1/8" x 1/2" tape caulking between the support member and concrete panel. After installation the height variation between panels shall not exceed 0.25" in accordance to Federal Register Vol. 56, No. 144 figure 7.

Composite Decking – Cornerwalks Only

Wood Polymer composite 2" x 6" - low maintenance, long life
Recycled wood and plastics - environmentally sound. Attached to frame on 2' maximum spans.

Polyethylene Floats

Shell: Roto-molded polyethylene, resistant to marine life and petroleum

Core: Expanded polystyrene block is molded inside the shell.

Shell thickness shall be .150 inches ARM STD +/-20%.

Firmly bolted to the frame

Winch and Cable Anchorage System - low maintenance ample cable capacity

LM 16 Wintech winches with 16" wide drum - extra cable capacity

Two-speed gears - adjust easily

Elevated winch stand and multi-directional fairlead - easy use, reduces cable wear

5/8" galvanized cable and clamps - industry standard

Anchors to be a minimum of 9,000 pounds

Heavy Duty Roofing System – Fuel platform only

Heavy-duty roof panels with 7.2" corrugation - extra strong, carries more snowload. Galvanized purlins and columns - long life, low maintenance

MBCI 24-gauge roof sheets are 50,000 pound yield

Columns are 2 1/2" x 11 gauge galvanized steel

Roof pitch = 1 1/2 : 12

Bumpering/Fendering

Single row 2" x 6" treated Southern Yellow Pine sidewood on perimeter

White #5001 vinyl bumper on perimeter attached with stainless steel staples

Cruiser Cushion on fuel dock

Mooring Devices – 10" Aluminum side mount cleats

Gangway – 6' x 100' aluminum ADA gangway with aluminum decking – pin on shore, roll on dock. 100 PSF Rating for aluminum gangway

Warranties

Two Year Manufacturer's Material Limited Warranty

Five Year Manufacturer's Concrete Decking Material Limited Warranty

Ten Year Manufacturer's Flotation Limited Warranty

***Due to the volatility of freight prices at this time, we reserve the right to revise freight costs at the time of shipment.**

Value - Total, including materials, and freight

(1) 6' x 100' Aluminum ADA gangway	\$56,881.00
(1) 8' x 474' walkway, (3) 8x20 Platforms	\$158,470.00
Installation for the above items	\$40,575.00
Total	\$255,926.00

Totals for walkway include all materials delivered to the site in Frisco, CO. (6) Anchors are included in the walkway, poured and installed by Meeco Sullivan (if installation option is selected). Gangway connection (5th wheel to new bulkhead) to be supplied by Meeco Sullivan. Embedment piece to be supplied by Meeco but installed by bulkhead contractor.

New fuel dock	\$146,463.00
New Dock A	\$110,145.00
Installation for the above items	\$77,655.00
Total	\$334,263.00

Totals for new docks shall include all materials delivered to the site. A total of 8 anchors are planned for the Fuel Dock and 6 anchors are planned for the new Dock A. Meeco to pour and install new anchors for the new docks (if installation option is selected). Dock A has a new security gate to match previous security gates. Site to provide locks for the gates.

Items Not Included

If installation is not selected as one of the options then Offloading, Installation, engineer stamped plans, utilities, permits, fees, and all applicable taxes are not included in the scope of work or the pricing

*This quote does not include any relocation or reworking of existing docks. Additional optional pricing is as follows:

Stamped Engineered Drawings	\$3,300.00
Price each for additional anchors – per anchor	\$1,437.00
Upgrade cable to Stainless Steel – (20) total anchors and cable	\$13,886.00
Additional daily rate for installation crew	\$3,000.00

There are approx. 40 anchors total on the existing docks. Price each includes concrete for anchor, 300 ft. of galvanized cable and the labor to drop the anchor in place
A day of work constitutes 4 guys working 10-hour days (does not include equipment)
This is the final scope of work for the planned new harbor at Frisco Bay Marina for 2019. If any additional considerations for changes to the scope, we will be happy to provide a written estimate for that work.

This quotation is subject to review after 30 days.

Please call 918-424-9804 if I may be of further assistance.

Sincerely,

Steve Shoup
South Central Regional Sales Manager
Meeco Sullivan, LLC



MEMORANDUM

P.O. BOX 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: ADDISON CANINO, ASSISTANT PUBLIC WORKS DIRECTOR
RE: RESOLUTION 19-12 COLUMBINE HILLS CONCRETE INC. – SECOND AND BELFORD CONNECTOR PATHWAY PROJECT (2BC) CONTRACT
DATE: MARCH 12, 2019

Summary: Construction contract between the Town of Frisco and Columbine Hills Concrete Inc., for the construction of the Second and Belford Connector Pathway Project (2BC).

Background: In 2016 the Town applied for, and later received, a TAP (Transportation Alternatives Program) grant from Colorado Department of Transportation (CDOT) on behalf of the Federal Highway Administration (FHWA). The main goal of this project is to connect the highly active Main Street and Highway 9 to link neighborhoods, transit centers, an elementary school, key recreation areas, and the Summit Recreation Path. The design and review process took place during 2017 and 2018. Final design approval was granted by CDOT in 2018, therefore the Town was able to put the project out to bid.

Staff Analysis: Two bids were received for this project: Giovanni Construction LLC., and Columbine Hills Concrete, Inc. However, although Giovanni Construction was originally the apparent low bidder for the project, their bid was deemed non-responsive due to not following project specifications in regards to Disadvantaged Business Enterprises (DBE). DBE specifications are required for all grant projects, and not adhering to those specifications nullifies the bid.

The second bid submitted for this project was from Columbine Hills Concrete Inc., (“CHC”). After analyzing and vetting their bid, staff determined the bid from Columbine Hills Concrete, Inc., was responsive and complete. Columbine Hills’ scope of work would include the addition of two multi-use pathways on Second Avenue and Belford Street. Attached to the pathways, will be a three foot (3’) drain pan, as well as reworking grades in the project area where driveways are attached to the pathways. One of Columbine Hills’ most notable projects in the Town of Frisco was being hired for Step Up Main Street, where the entire Main Street corridor was improved and updated. This included sidewalks, intersections, and infrastructure improvements. The construction time of the project is 42 days. The anticipated start date for this project is April 15, 2019, with final completion being May 27, 2019.

Recommendation: It is the recommendation of staff, that Council approve the construction contract between Town of Frisco and Columbine Hills Concrete Inc., for the construction of the Second and Belford Connector Pathway Project (2BC).

Financial Impact: This project is a grant funded project in partnership with CDOT. Upon project completion and final acceptance by CDOT, the Town will be reimbursed eighty percent (80%) of the total project cost. As budgeted, CDOT and the Town of Frisco approved an estimated project cost of four hundred and eighty-nine thousand, nine hundred and sixty-nine dollars (\$489,969) of which up to 80% (\$391,975) would be reimbursed by CDOT.

If the Town Council chooses to approve of the contract with Columbine Hills Concrete, Inc., their bid is under budget at four hundred and fifty-one thousand, two hundred and twenty-five dollars (\$451,225), which allows for unexpected project contingencies or change orders should they be necessary, as shown on the table below. This gives the Town flexibility in circumstances that have not been planned for throughout construction.

Project 2BC Budgeted and Bid Costs

	Total Project	CDOT/TOF Cost
Budgeted Project	\$489,969	
CDOT 80%		\$ 391,975
TOF 20%		\$ 97,994
Columbine Hills Concrete	\$451,225	
CDOT 80%		\$ 360,980
TOF 20%		\$ 90,245
Available for Contingencies	\$38,471	

Reviews and Approvals:

Jeff Goble, Public Works Director – Approved
Nancy Kerry, Town Manager - Approved

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
RESOLUTION 19-12**

A RESOLUTION FOR THE AWARD OF CONTRACT FOR THE CONSTRUCTION AND COMPLETION OF THE SECOND AND BELFORD CONNECTOR PATHWAY PROJECT (TAP NO. M500-004/SA NO.22395), DATED MARCH 12, 2019.

WHEREAS, the Frisco Town Council has determined that it is in the best interest of its citizens and visitors to provide safe connecting access to the Town's Main Street, in addition to County recreation pathways; and

WHEREAS, the Town Council has determined that all provisions of Bidding Procedures and Contract Formation as stated in Chapter 9, Section 3, Paragraph E of the Town of Frisco Code have been met, in addition to Colorado Department of Transportation guidelines; and

WHEREAS, the Town Council has determined that staff recommendation for the award of the above stated contract will provide the best service to the Town; and

WHEREAS, there has been sufficient money budgeted for in Capital Improvements for this contract award.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THAT:

The Mayor and Town Clerk are hereby authorized to execute and all documents necessary to enter into a construction contract for the Second and Belford Connector Pathway Project with Columbine Hills Concrete, Inc. of Silverthorne, Colorado at a contract price of four hundred and fifty-one thousand two hundred and twenty-five dollars (\$451,225).

INTRODUCED, READ, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO, COLORADO THIS 12TH DAY OF MARCH, 2019.

TOWN OF FRISCO:

Gary Wilkinson, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

BIDDING DOCUMENTS

for

Town of Frisco

2nd and Belford Connector Pathway (2BC)

TAP No. M500-004/SA No. 22395

September 10, 2018

Owner:

Town of Frisco
0102 School Road
PO Box 4100
Frisco, CO 80443
Contact: Addison Canino
Phone: Office: 970.668.0836 Ext. 1318

Engineer:

Martin/Martin Inc
0101 Fawcett Road, Suite 260
PO Box 8896
Avon, Colorado 81620
Contact: Mark Luna
Phone: 970.926.6007

BID FORM FOR CONSTRUCTION CONTRACTS

Prepared by



Issued and Published Jointly by



Copyright © 2013:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

2nd and Belford Connector Pathway

TAP M500-0041 / SA# 22395

TABLE OF CONTENTS

	Page
Article 1 – Bid Recipient.....	1
Article 2 – Bidder’s Acknowledgements	1
Article 3 – Bidder’s Representations.....	1
Article 4 – Bidder’s Certification	2
Article 5 – Basis of Bid.....	3
Article 6 – Time of Completion	3
Article 7 – Attachments to this Bid	3
Article 8 – Defined Terms.....	4
Article 9 – Bid Submittal.....	5

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Town of Frisco
PO 4100
102 School Road
Frisco, CO 80443

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
<u># 1</u>	<u>9-10-18</u>
<u># 2</u>	<u>9-10-18</u>
<u># 3</u>	<u>9-11-18</u>
<u># 4</u>	<u>9-17-18</u>

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

Addendum 1

Addendum 1, dated September 10, 2018, will address the *Construction Agreement*, part 2, Commencement and Completion of Work, in the Project Manual. November 31, 2018 is a typo and will be changed to December 1, 2018. The section will now read:

The two bids submitted have different construction times. If the bid is accepted to commence work on October 22, 2018 (EXHIBIT A1), completion shall be December 1, 2018. If the bid is accepted to commence work on April 15, 2019 (EXHIBIT A2), final completion shall be May 27, 2019.

Addendum 2

Addendum 2, dated September 10, 2018, will address the Construction agreement, part 2, Commencement and Completion of Work, in the Project Manual. With the time constraints that would be placed on doing construction this fall, EXHIBIT A1, will now be removed. That will leave EXHIBIT A2 as the only bid for the project. The section will now read:

The bid that is submitted will have a timeline that will begin in the Spring of 2019. If the bid is accepted to commence work on April 15, 2019 (EXHIBIT A2), final completion shall be May 27, 2019.

Addendum 3

Addendum 3, dated September 11, 2018, will address a discrepancy concerning Utilities, in the Project Manual. The contact number for Ron Hickman from Centurylink, is inaccurate. His contact number is 970.328.8257. The section will now read:

Utility		
Entity	Contact Name	Contact Phone
Comcast	Dave Stepisnik	303.684.3329
Xcel Energy (low pressure gas, electric)	Amy Legace	970.262.4077
Centurylink	Ron Hickman	970.328.8257

Addendum 4

Addendum 4, dated September 17, 2018, will address the Invitation to Bid, in the Project Manual. As the section reads now, "Bids will be opened publicly at 2:01pm on Tuesday, October 2, 2018..." This is to be changed, and the section will now read:

Bids will be opened publicly at 2:01p.m. on Monday, October 1,2018, at Frisco Town Hall, Council Chambers, 1 Main Street, Frisco, CO 80443, and shall be tabulated by the Town.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

See attached EXHIBIT A1 and EXHIBIT A2 BID TABS, both to be completed with bid submittal.

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

EXHIBIT A1

Total of Lump Sum and Unit Price Bids = Total Bid Price

\$ NA - See Admin 2

Exhibit A2

Total of Lump Sum and Unit Price Bids = Total Bid Price

\$ 451,225.00

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. List of Proposed Subcontractors;
 - C. List of Proposed Suppliers;
 - D. List of Project References;
 - E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - F. Contractor's License No.: 1358A [or] Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - G. Required Bidder Qualification Statement with supporting data; and
- 7.02 Additional CDOT Requirements

In addition to the Pre-Qualification requirements in section 3.0 of the Instruction to Bidders that following CDOT requirements must be met by all Bidders:

- A. The contract goal of Underutilized Disadvantaged Business enterprises (UDBEs) for this contract has been determined to be 3.0%. As Part of compliance with the goal, Contractor's are required to submit CDOT forms 1413 and 1414 with their bid. NO later the 4:00 PM the day after the bid opening the apprentlow bidder must also submit the following CDOT Forms 1415 and 1416
- B. Davis-Bacon Wages are required for this project. See the Standard Special Provisions for the latest wage decision.
- C. In according with CDOT bidding requirements all Bidders are also required to submit CDOT Form 606 with their bid. No later then 4:00 PM the day after the bid opening the apparent low bidder must also submit the following CDOT Forms 605 and 621.
- D. Failure to submit CDOT Forms 1413, 1414 and 606 with bid shall be considered non-responsive and will be rejected.

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

8.02

ARTICLE 9 – BID SUBMITTAL

BIDDER: [Indicate correct name of bidding entity]

Columbine Hills Concrete Inc

By:

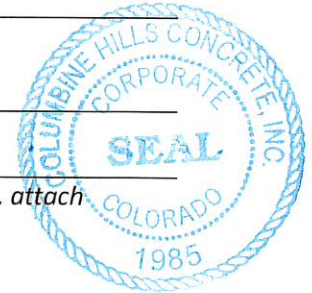
[Signature]



[Printed name]

Scott Downen, President

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)



Attest:

[Signature]



[Printed name]

Trish Srat

Title:

Controller

Submittal Date:

10-01-2018

Address for giving notices:

P.O. BOX 2369

Silverthorne, CO 80498

Telephone Number:

970 468-7813

Fax Number:

970 468-8027

Contact Name and e-mail address:

James Letson

James@ColumbineConcrete.com

Bidder's License No.:

Town of Frisco # 1367
(where applicable)

CDOT # 1358A

INVITATION TO BID

Notice is hereby given that the Town of Frisco (the "Town") will receive sealed bids for 2ND AND BELFORD CONNECTOR PATHWAY until Monday, October 1, 2018, at 2:00 p.m.

The specifications for the construction of 2ND AND BELFORD CONNECTOR PATHWAY currently available from The Town's Public Works Department offices at 102 School Road, Frisco CO 80443. Each bidder may obtain one set of specifications.

The Town reserves the right to reject any and all bids, and to make final determination in the event of duplications.

No bid may be withdrawn for a period of sixty (60) days after the date set for opening thereof.

There will be an optional pre-bid meeting on Monday, September 24, 2018 at 12 p.m. The meeting will be conducted at Frisco Town Hall, Council Chambers, 1 Main Street, Frisco, CO 80443.

Colorado labor shall be employed to perform the work for which bids are requested herein to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on such work, pursuant to C.R.S. § 8-17-101.

The Town requires that a certified or cashier's check be deposited or that a corporate surety bond in the amount of five percent (5%) of the total bid amount be provided before the Town can accept or consider any bid. The bid [and the deposit or bond] shall be filed with the Town Clerk, securely sealed and endorsed on the outside with a brief statement as to the nature of the item or work for which the bid is provided. Upon a bid award, such deposit or bond shall be returned to the unsuccessful bidder(s). In the case of the successful bidder, the deposit or bid bond will be returned upon receipt of the required payment and performance bonds, each in the full amount of the contract price.

Bids will be opened publicly at 2:01 p.m. on Tuesday, October 1, 2018, at Frisco Town Hall, Council Chambers, 1 Main Street, Frisco, CO 80443, and shall be tabulated by the Town.

Any questions regarding the project should be directed to Addison Canino, Project Manager, at (970) 668-9150 , or at the following e-mail address: AddisonC@townoffrisco.com.

Bid results are usually available one hour after bid opening by calling (970) 331-6632.

/s/ Deborah Wohlmuth, CMC
Town Clerk

DATE OF PUBLICATION:

PUBLISHED IN:

The Summit Daily – Every Monday, Wednesday, and Friday

BidNet – 21 Calendar Days

Town of Frisco Government Website – 21 Calendar Days

The Daily Journal - 21 Calendar Days

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made and entered into this 30 day of January, 2019, by and between the TOWN OF FRISCO, a Colorado home rule municipal corporation with an address of 1 Main Street, Frisco, CO 80443 (the "Town"), and Columbine Hills Concrete INC ("Contractor") (collectively the "Parties").

For the consideration described herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Scope of Work. Contractor shall perform the following described work (the "Project"), in accordance with this Agreement and the Contract Documents, which Contract Documents are as defined in the General Conditions attached hereto and incorporated herein by this reference as Exhibit "A". The Project is generally described as follows:

The Project is described and/or depicted with particularity in the "Scope of Work" attached hereto as Exhibit B, which Exhibit is incorporated herein by this reference.

1. Bonds. Within ten (10) days of the date of this Agreement, Contractor shall provide the performance and payment bonds and certificate of insurance required by the Contract Documents.

2. Commencement and Completion of Work. The two bids submitted have different construction times. If the bid is accepted to commence work on October 22, 2018 (EXHIBIT A1), completion shall be November 31, 2018. If the bid is accepted to commence work on April 15, 2019 (EXHIBIT A2), final completion shall be May 27, 2019.

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

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

5. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Contractor and the Town, superseding all prior oral or written communications.

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

7. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed to:

The Town: Addison Canino
Project Manager
P.O. Box 4100
Frisco, CO 80443

Contractor: Columbine Concrete Inc
James Letson
Project Manager
James C Columbine Concrete, Con
P.O. Box 2369, Silverthorne Co 80498

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

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

10. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

11. Governmental Immunity. The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers or employees.

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

EXHIBIT A TO CONSTRUCTION AGREEMENT

GENERAL CONDITIONS

PART 1. DEFINITIONS

1.01 CONTRACT DOCUMENTS:

- A. Invitation to Bid;
- [B. Bid Form];**
- [C. Bid Schedule];**
- D. Construction Agreement;
- E. General Conditions;
- F. Special Conditions;
- G. Technical Specifications;
- H. Notice of Award;
- I. Notice to Proceed;
- J. Payment Bond;
- K. Performance Bond;
- L. Construction Drawings;
- M. Documentation submitted by Contractor prior to Notice of Award; and
- N. Addenda 1 through 4.

1.02 CHANGE ORDER:

A written order issued by the Town after execution of the Construction Agreement authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time.

1.03 CONTRACT:

The entire written agreement covering the performance of the Work described in the Contract Documents including all supplemental agreements thereto and all general and special provisions pertaining to the Work and materials therefor.

1.04 CONTRACT PRICE:

The amount set forth in Paragraph 3 of the Construction Agreement.

1.05 CONTRACT TIME:

The time for completion of the Project as set forth in Paragraph 2 of the Construction Agreement.

1.06 DAY:

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Saturday, Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

1.07 FINAL COMPLETION:

The date as certified by the Project Manager when all of the Work on the Project is completed and final payment may be made.

1.08 PROJECT:

The construction task or tasks more fully described in the "Scope of Work" provisions (Exhibit B) of the Construction Agreement.

1.09 PROJECT MANAGER:

The Town's duly authorized representative in connection with the Project.

1.10 SUBCONTRACTOR:

Any person, firm or corporation with a direct contract with Contractor who acts for or in behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

1.11 SUBSTANTIAL COMPLETION:

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Project; or when the Town may occupy or take possession of all or substantially all of the Project and put it to beneficial use for its intended purposes.

1.12 TOWN

The Town of Frisco, Colorado, a Colorado municipal corporation.

1.13 WORK:

All the work specified, indicated, shown or contemplated in the Contract Documents to construct the Project, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

PART 2. TIME

2.01 TIME OF THE ESSENCE:

All times stated in the Contract Documents are of the essence.

2.02 FINAL ACCEPTANCE:

Upon Final Completion, the Project Manager will issue final acceptance.

2.03 CHANGES IN THE WORK:

The Town reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Contract Price and the Contract Time. All changes shall be authorized by a written Change Order signed by the Project Manager. The Change Order shall include appropriate changes in the Contract Documents and the Contract Time. The Work shall be changed and the Contract Price and Contract Time modified only as set forth in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to the Town shall be determined by mutual agreement of the parties before the work set forth in the Change Order is commenced. If a Change Order results in an increase in the Contract Price, approval of the Frisco Town Council may be required.

The Town shall provide Contractor with written assurance of additional appropriations should any change in the Work result in an increase in the Contract Price exceeding the amount originally appropriated for the Work.

2.07 DELAYS:

A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, adverse weather conditions not reasonably to be anticipated, or other unavoidable casualties beyond Contractor's control, the Contract Time shall be extended for a reasonable period of time.

B. Any request for extension of the Contract Time shall be made in writing to the Project Manager not more than seven (7) days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work.

C. Contractor shall not be entitled to any increase in the Contract Price, or to damages, or to additional compensation as a consequence of any such delays.

2.08 NO DAMAGES FOR DELAY:

The Town shall not amend the Contract Price nor shall Contractor be entitled to additional compensation of any sort for costs or damages incurred as a result of any delays in performance unless such delay is the direct result of the acts or omissions of the Town or persons acting on behalf of the Town, in accordance with C.R.S. § 24-91-103.5.

PART 3. CONTRACTOR'S RESPONSIBILITIES

3.01 COMPLETION/SUPERVISION OF WORK:

Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

3.02 DUTY TO INSPECT AND CONTRACTOR'S REPRESENTATIONS:

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the Town of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

In order to induce Town to enter into the Contract, Contractor makes the following representations:

- a. Contractor has examined and carefully studied the Contract Documents and the other related data identified in or related to the Contract Documents;

- b. Contractor has visited the site(s) and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;
- c. Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the Work; and
- d. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site(s), reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

3.03 FURNISHING OF LABOR AND MATERIALS:

- A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.
- B. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*, as amended.

3.04 EMPLOYEES AND SAFETY:

- A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Project any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.
- B. Contractor shall be fully responsible to the Town for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Town.
- C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the Project site(s) and adjacent property.

3.05 CLEANUP:

- A. Contractor shall keep the Project site(s) and adjoining ways free of waste material and rubbish caused by its employees or subcontractors. Contractor shall remove all such waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon termination of its Work, conduct general cleanup operations on the Project site(s), including the cleaning of all surfaces, paved streets and walks, and steps. Contractor shall also conduct such general cleanup operations on adjacent properties which were disturbed by the Work.
- B. If Contractor fails to perform the cleanup required by this Section, after written notice, the Town may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the Town the costs incurred by the Town for such cleanup, or the Town shall have the right to withhold said amount from any final payment due to Contractor.

3.06 PAYMENT OF ROYALTIES AND LICENSE FEES:

Contractor agrees to pay all royalties and license fees necessary for the Project, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the Town harmless from such actions.

3.07 TAXES, LICENSES AND PERMITS:

Contractor shall pay all taxes imposed by law in connection with the Project and shall procure all permits and licenses necessary for the prosecution of the Work.

3.08 SAMPLES AND SHOP DRAWINGS:

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents. All Work shall comply with approved samples and drawings.

3.09 COMPLIANCE WITH LAWS AND REGULATIONS:

Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and orders in any manner relating to the Project. If any provision of the Contract Documents is at variance therewith, Contractor shall notify the Project Manager promptly.

3.10 SUBCONTRACTORS:

A. Contractor shall furnish to the Project Manager at the time the Construction Agreement is executed, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.

B. Contractor shall not employ a subcontractor to whose employment the Project Manager reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.

C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents, and shall incorporate the relevant provisions of the Contract Documents.

3.11 CORRECTIVE WORK:

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform. Such corrections shall be accomplished within the time period approved by the Project Manager. Failure to complete such required corrections within the time period required shall constitute a breach of the Contract.

3.12 OTHER CONTRACTS:

The Town reserves the right to let other contracts in connection with the Project. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the Project site(s) necessary to perform their contracts.

3.13 COMMUNICATION:

Contractor shall direct all communications to the Town regarding the Project to the attention of the Project Manager.

PART 4. TERMINATION

4.01 LABOR DISPUTES:

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site(s), Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the Work because of such picket or other form of labor dispute, the Town may terminate the services of Contractor after giving forty-eight (48) hours' written notice of its intent to do so.

4.02 DEFAULT:

The Town may terminate this Contract upon seven (7) days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the Town shall not be the Town's exclusive remedy, and the Town may pursue such other remedies and actions lawfully available to the Town including, but not limited to, an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

PART 5. WARRANTIES:

5.01 WARRANTY OR FITNESS OF EQUIPMENT AND MATERIALS:

Contractor represents and warrants to the Town that all equipment and materials used in the Project, and made a part of the Project, or placed permanently in the Project, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

~~5.02 GENERAL WARRANTY:~~

~~Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of two (2) years from the date of final acceptance of the Project by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Project which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the Town, the Town may withdraw from the Performance and/or Payment Bonds any and all amounts necessary to complete the required work. The expiration of the warranty period shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.~~

PART 6. BONDS, INSURANCE AND INDEMNIFICATION

6.01 INDEMNIFICATION:

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise

out of or are in any manner connected with this Agreement or the Scope of Services if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

6.02 NOTICE OF CLAIM:

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the Town in writing of the nature of the claim within twenty-four (24) hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the Town apprised of the disposition of the claim, and Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

6.03 INSURANCE:

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

B. Without limiting the generality of the foregoing, Contractor shall procure and maintain, and shall cause any subcontractor of Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of Work under the Contract, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease – policy limit, and one million dollars (\$1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. Commercial general liability insurance with minimum combined single limits of at least six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall be endorsed to include the Town and the Town's officers, employees, and consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. "All Risk" Builder's Risk insurance in a form acceptable to the TOWN upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include, as named insureds, the Town, Contractor, and any Subcontractors. This

insurance shall include "all risk" insurance for physical loss or damage including without duplication of coverage, at least theft, vandalism, malicious mischief, transit, materials stored off site, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or materials. The Contractor shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The insurance shall be written without a co-insurance clause.

C. Any insurance carried by the Town, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy of insurance required by this Section 6.03.

D. Contractor shall provide to the Town a certificate of insurance as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

6.04 PERFORMANCE AND PAYMENT BONDS:

Contractor shall furnish a Performance Bond and a Payment Bond, each in the full amount of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. These bonds shall remain in effect at least until two (2) years after the date of Final Completion.

PART 7. PAYMENT

7.01 PROGRESS PAYMENTS:

A. The Town shall make periodic progress payments to Contractor within fifteen (15) days following the Project Manager's approval of the Work completed. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit copies of invoices from subcontractors or supplies and partial waivers executed by each.

B. Progress payments shall be in an amount equal to ninety percent (90%) of the Work actually completed until fifty percent (50%) of the total Work on the Project, as determined by the Project Manager, is completed. Such determination shall include materials and equipment not incorporated in the Work but delivered to the Project Site and suitably stored. After fifty percent (50%) of the total Work is completed, no additional retainage shall be held.

C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

D. Whenever Contractor receives payment pursuant to this Contract, Contractor shall make payments to each of its Subcontractors of any amounts actually received that were included in Contractor's request for payment to Town for such subcontracts. Contractor shall make such payments within fifteen (15) days of receipt of payment from Town in the same manner as Town is required to pay Contractor pursuant to the Contract Documents if the Subcontractor is

satisfactorily performing under its contract with Contractor. Nothing in this paragraph shall be construed to affect the retention provisions of the Contract Documents.

7.02 FINAL PAYMENT:

Upon final acceptance of the Project, the Town shall pay the Contractor the remainder of the Contract Price theretofore unpaid. Notwithstanding any other part of this Section, the Contractor agrees that the Town shall, when required by C.R.S. § 38-26-107(1), publish a “notice of final payment” in a legal Summit County newspaper prior to making final payment to the Contractor. This notice of final payment advertises the date, time, and place when final payment will be made and is intended to alert subcontractors so they can present any claims for unpaid amounts to the Town. The final payment procedure typically delays the final payment made to the Contractor of the retainage amount.

Regardless of whether “notice of final payment” is required by state statute, final payment shall not be made to the Contractor until the Town has complied with all applicable requirements of C.R.S. § 38-26-107 and all claims, if any, have been resolved to the satisfaction of the Town.

7.03 LIQUIDATED DAMAGES:

A. Because time is of the essence and delayed performance constitutes a compensable inconvenience to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in the Construction Agreement, as modified through approved change orders, Contractor shall be assessed the following amounts:

Original Contract Amount (\$)		Liquidated Damages per Calendar Day (\$)
From More Than	To And Including	
0	150,000	300
150,000	500,000	1,000
500,000	1,000,000	1,600
1,000,000	2,000,000	2,300
2,000,000	4,000,000	4,100
4,000,000	10,000,000	5,800
10,000,000		7,000

B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the Town of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Contract Time. Liquidated damages may be deducted from any payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town.

7.04 ORAL AGREEMENTS PROHIBITED:

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Frisco Town Council. The Town acknowledges and agrees that sufficient funds have been appropriated to

pay the Contract Price, but Contractor shall not rely upon the appropriation of any monies or other funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Frisco Town Council.

7.05 ITEMS NOT INCLUDED IN BID:

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically listed in the Bid as a Bid item.

7.06 CHANGES IN QUANTITY:

A. Except as provided in Section 7.07, the unit Bid price shown in the Bid Schedule shall be used to determine the payment owed Contractor for any changes in quantity.

B. The actual quantity placed, as determined by the Project Manager, shall be used to calculate the payment due to Contractor.

C. Prior to any Work being performed in excess of any of the Bid Schedule quantities, Contractor shall notify the Town, in writing, of every quantity that will exceed one hundred five percent (105%) of the quantity listed on the Bid Schedule.

D. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.

7.07 BID PRICE ADJUSTMENTS:

A. When a major item is increased to more than one hundred twenty five percent (125%) or decreased below seventy five percent (75%) of the original quantity stated on the Bid Schedule, the unit Bid price shall be modified by written change order. Payment for major items shall be calculated by multiplying the actual quantity placed by the modified Bid price.

B. For purposes of this Section, a major item is any item having a Bid value, determined by multiplying the Bid quantity by the unit Bid price, that exceeds ten percent (10%) of the original Contract Price.

7.08 ELIMINATED ITEMS:

Should any items contained in the Bid Schedule be found unnecessary for completion of the Work, the items shall be eliminated. The Contract Price shall be modified through written change order, and the amount of the change order shall be the eliminated quantity multiplied by the unit Bid price stated in the Bid Schedule, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor, and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

7.09 MATERIALS STORED BUT NOT INCORPORATED:

Payments may be made to Contractor for materials stored on the Project site(s) but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Project and conforms with the Contract Documents. Payments shall not exceed eighty-five percent (85%) of the price shown in the Bid Schedule or one hundred percent (100%) of the certified invoice cost

of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

7.10 COST RECORDS:

Contractor shall make cost records available to the Town if the Town deems it necessary to determine the validity and amount of any item claimed.

PART 8. MISCELLANEOUS

8.01 PUBLICATIONS:

Any and all publications relating to the Project and authored by Contractor or any of its subcontractors shall be submitted to the Town for its prior written approval of the content of the publication. If the Town disapproves of the content of the publication, the author shall withdraw it from publication. The term "publication" as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

8.02 CONFIDENTIALITY:

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared or assembled by Contractor under this Contract shall, to the extent authorized and permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the Town. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the Town in writing before responding.

8.03 INDEPENDENT CONTRACTOR:

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the Town's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other leave benefits.

8.04 GOVERNING AUTHORITIES

Project Standard Specifications

The standard specifications for the project are the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction 2017 and as specified and/or revised by the Project Special Provisions and Standard Special Provision included in this project manual.

Work shall be completed as per these specifications and accepted by the Owner, Colorado Department of Transportation and its staff, or proper agencies having jurisdiction before final payment is requested by the Owner.

8.06 COMPLETION OF WORK

Work shall be completed as per the Colorado Department of Transportation Standard Specifications for Road and bridge Construction 2017 (and as modified by these specifications) and accepted by the Owner or proper agencies having jurisdiction before final payment is request of the Owner.

8.05 CONFLICTS:

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Construction Agreement.
2. Special Conditions.
3. General Conditions.
4. Supplemental Specifications. CDOT (Red Book) 2017 Standard Specifications for Road and Bridge Construction.
5. Detailed Plans (Calculated dimensions will govern over scaled dimensions).
6. Standard Plans (Calculated dimensions will govern over scaled dimensions).

PERFORMANCE BOND

Bond No. 004767R

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) COLUMBINE HILLS CONCRETE, INC.

(Address) 252 Warren Avenue, Suite 2-G, P. O. Box 2369, Silverthorne, Colorado 80498-2369

~~(an Individual), (a Partnership)~~, (a Corporation), hereinafter referred to as "the Principal", and

(Firm) WESTFIELD INSURANCE COMPANY

(Address) 1 Park Circle, P. O. Box 5001, Westfield Center, Ohio 44251-5001

hereinafter referred to as "the Surety", are held and firmly bond unto the Town of Frisco, Colorado, a municipal corporation hereinafter referred to as "the Owner", in the amount of FOUR HUNDRED FIFTY ONE THOUSAND* Dollars in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Construction Agreement with the Owner, dated the 30 day of January, 2019, for the performance of certain Work (the "Construction Contract"),** which is by reference made a part hereof,

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Agreement during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without Notice to the Surety and during the life of the guaranty period, and if shall satisfy all claims and demands incurred under such Agreement, and shall fully indemnify and save harmless the Owner from all cost and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and then this obligation shall be void;

Otherwise the Principal and Surety shall have the following obligations:

1. If Owner is not in Default under the Construction Contract, Surety's obligation under this Bond shall arise after:

1.1 Owner has notified Principal and Surety at its address listed herein that Owner by seven days' written notice intends to terminate the services of Principal or otherwise declare Principal to be in default of its obligations under the Construction Contract; and

1.2 Owner has declared Principal to be in Default and formally terminated Principal's right to complete the Construction Contract; and

1.3 Owner has agreed to pay the Unpaid Balance of the Contract Price to Surety in accordance with the terms of the Construction Contract or to a Principal selected to perform the Construction Contract in accordance with the terms of the Construction Contract with Owner.

2. When Owner has satisfied the conditions of paragraph 1, Surety shall promptly and at Surety's expense take one of the following actions:

2.1 Arrange for Principal, with consent of the Owner, to perform and complete the Construction Contract; or

2.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent Principals; or

2.3 Obtain bids or negotiated proposals from qualified Principals acceptable to Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by Owner and the Principal selected with Owner's concurrence, to be secured with the performance and payment bonds executed by a qualified Surety equivalent to the Bonds issued on the Construction Contract, and pay to Owner the amount of damages as described in paragraph 4 in excess of the Unpaid Balance of the Contract Price incurred by Owner resulting from the Principal's Default; or

2.4 Waive its right to perform and complete, arrange for completion, or obtain a new Principal and with reasonable promptness under the circumstances, after investigation, determine the amount for which it is liable to Owner and, as soon as practicable after the amount is determined and approved by Owner, tender payment therefor to Owner.

3. If Surety does not proceed as provided in paragraph 2 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in subparagraph 2.4 and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice, Owner shall be entitled to enforce any remedy available to Owner.

4. After Owner has terminated Principal's right to complete the Construction Contract, and if Surety elects to act under subparagraph 2.1, 2.2, or 2.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Principal under the Construction Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the unpaid balance of the Contract Price and to mitigation of costs and damages on the Construction Contract, Surety is obligated without duplication for:

4.1 The responsibilities of Principal for correction of defective work and completion of the Construction Contract; and

4.2 Additional legal, design professional and delay costs resulting from

Principal's Default, and resulting from the actions or failure to act of Surety under paragraph 2;
and

4.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of Principal.

5. Surety hereby waives notice of any change, including changes to the Construction Contract or to related subcontracts, purchase orders and other obligations.

6. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Owner declares Principal to be in default or within two years after Principal ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to Sureties in the State of Colorado shall be applicable.

7. Any notice to the parties required under this Bond shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and e-mail addresses may be provided for convenience only.

OWNER: The Town of Frisco
 Project Manager: Addison Canino
 P.O. Box 4100
 Frisco, CO 80443

PRINCIPAL: Columbine Hills Concrete, Inc.
252 Warren Avenue, Suite 2-G
P. O. Box 2369
Silverthorne, Colorado 80498-2369

SURETY: Westfield Insurance Company
1 Park Circle
P. O. Box 5001
Westfield Center, Ohio 44251-5001

8. This Bond is to be governed by the laws of the State of Colorado.

9. Definitions.

9.1 Unpaid Balance of the Contract Price: The total amount payable by Owner to Principal under the Construction Contract after all proper adjustments have been made, including allowance to Principal of any amounts received or to be received by Owner in settlement of insurance or other claims for damages to which Principal is entitled, reduced by all valid and

proper payments made to or on behalf of Principal under the Construction Contract.

9.2 Default: Failure of the Principal or Owner, as the case may be, that has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

IN WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each one of which shall be deemed an original, this 30 day of January, 20 19.

PRINCIPAL COLUMBINE HILLS CONCRETE, INC.

ATTEST:

By: Tush Sinat

By: Scott R. Downen

Title: Controller

Title: President

Address: 2252 Warren Avenue, Suite 2-G, P. O. Box 2369

Silverthorne, Colorado 80498-2369

(Corporate Seal)



SURETY

WITNESS:

~~XXXXXX~~

Surety: WESTFIELD INSURANCE COMPANY

By: Cynthia M. Burnett
Cynthia M. Burnett, Littleton, Colorado

By: Douglas J. Rothey
Douglas J. Rothey

Attorney-in-Fact: Douglas J. Rothey

Title: Attorney-in-Fact

Address: 1 Park Circle, P. O. Box 5001

Westfield Center, Ohio 44251-5001

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Construction Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Owner.

PAYMENT BOND

Bond No. 004767R

KNOW ALL MEN BY THESE PRESENTS: that

(Firm) COLUMBINE HILLS CONCRETE, INC.

(Address) 252 Warren Avenue, Suite 2-G, P. O. Box 2369, Silverthorne, Colorado 80498-2369

~~(an Individual), (a Partnership)~~, (a Corporation), hereinafter referred to as "the Principal", and

(Firm) WESTFIELD INSURANCE COMPANY

(Address) 1 Park Circle, P. O. Box 5001, Westfield Center, Ohio 44251-5001

hereinafter referred to as "the Surety", are held and firmly bond unto the Town of Frisco, Colorado, a municipal corporation, hereinafter referred to as "the Owner", in the amount of FOUR HUNDRED FIFTY ONE THOUSAND Dollars in lawful money of the United States, whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, to the Owner to pay for labor, materials and equipment furnished for use in the performance of that Construction Agreement with the Owner, dated the 30 day of January, 20 19, for the performance of certain Work (the "Construction Contract"),** which is by reference made a part hereof,

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in the Construction Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER,

1. That Surety shall have no obligation to Claimants under this Bond until:

1.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

1.2 Claimants who do not have a direct contract with Contractor:

1.2.1 Have furnished written notice to Contractor and sent a copy, or notice thereof to Owner, up to and including the date of final settlement under the Construction Contract, stating with substantial accuracy the amount of the claim and the name of the party to whom materials were furnished or supplied or for whom labor was done or performed; and

1.2.2 Have either received a rejection in whole or in part from Contractor, or not

received within 30 days of furnishing the above notice any communication from Contractor by which Contractor has indicated the claim will be paid directly or indirectly; and

1.2.3 Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.

2. If a notice required by Section 1 is given by Owner to Contractor or to Surety, that is sufficient compliance.

3. When a Claimant has satisfied the conditions of paragraph 1, Surety shall promptly and at Surety's expense take the following actions:

3.1 Send an answer to the Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

3.2 Pay or arrange for payment of any undisputed amounts.

4. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

5. Amount owed by Owner to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Construction Performance Bond. By Contractor's furnishing and Owner's accepting this Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

6. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

7. Surety hereby waives notice of any change, including changes to the Construction Contract or to related subcontracts, purchase orders and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Owner declares Contractor to be in default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to Sureties in the State of Colorado shall be applicable.

9. Any notice to the parties required under this Bond shall be in writing, delivered to the person designated below for the parties at the indicated address unless otherwise designated in writing. Only mailing by United States mail or hand-delivery shall be utilized. Facsimile and e-mail addresses may be provided for convenience only.

OWNER: The Town of Frisco
 Project Manager: Addison Canino

P.O. Box 4100
Frisco, CO 80443

PRINCIPAL: Columbine Hills Concrete, Inc.
252 Warren Avenue, Suite 2-G
P. O. Box 2369
Silverthorne, Colorado 80498-2369

SURETY: Westfield Insurance Company
1 Park Circle
P. O. Box 5001
Westfield Center, Ohio 44251-5001

10. This Bond is to be governed by the laws of the State of Colorado.

11. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

12. Definitions.

12.1 Claimant: Any person, partnership, or corporation, or other entity that has furnished labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by Contractor or its Subcontractor in or about the performance of the Work under the Construction Contract, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work, or architectural and engineering services required for performance of the Work of the Contractor and the Contractor's Subcontractors.

12.2 Default: Failure of the Contractor or Owner, as the case may be, that has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

IN WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each one of which shall be deemed an original, this 30 day of January, 20 19.

PRINCIPAL COLUMBINE HILLS CONCRETE, INC.

ATTEST:

By: Tish Sirota

By: Scott R. Downer

Title: Controller

Title: President

Address: 252 Warren Avenue, Suite 2-G, P. O. Box 2369

Silverthorne, Colorado 80498-2369

(Corporate Seal)



WITNESS:

~~XXXXXX~~

By: Cynthia M. Burnett
Cynthia M. Burnett, Littleton, Colorado

Attorney-in-Fact: Douglas J. Rothey

SURETY

Surety: WESTFIELD INSURANCE COMPANY

By: Douglas J. Rothey

Title: Attorney-in-Fact

Address: 1 Park Circle, P. O. Box 5001

Westfield Center, Ohio 44251-5001

(Surety Seal)

NOTE: Date of Bond must not be prior to date of the Construction Contract and Surety must be authorized to transact business in the State of Colorado and be acceptable to the Owner.

General Power of Attorney

Westfield Insurance Co. Westfield National Insurance Co. Ohio Farmers Insurance Co. Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint CYNTHIA M. BURNETT, DOUGLAS J. ROTHEY, JOINTLY OR SEVERALLY

of LITTLETON and State of CO its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship-

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be it Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents cancelling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 13th day of MARCH A.D., 2015 .

Corporate Seals Affixed



WESTFIELD INSURANCE COMPANY WESTFIELD NATIONAL INSURANCE COMPANY OHIO FARMERS INSURANCE COMPANY

By: Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio County of Medina ss.:

On this 13th day of MARCH A.D., 2015, before me personally came Dennis P. Baus to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial Seal Affixed



David A. Kotnik, Attorney at Law, Notary Public My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio County of Medina ss.:

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this day of A.D.



Frank A. Carrino Secretary

NOTICE OF AWARD

Date: January 24, 2019

Mr. Scott Downen, President
Columbine Hills Concrete, Inc.
PO Box 2369
Silverthorne, CO 80498-2369

Re: Town of Frisco 2nd Avenue and Belford Street Pathways

Dear Columbine Hills Concrete, Inc.:

Thank you for submitting a bid for 2nd and Belford Connector Pathway (Tap No. M500-004)(SA No. 22395).

Your firm has been selected as the successful Bidder, and accordingly, this letter is your Notice of Award for 2ND AND BELFORD CONNECTOR PATHWAY.

Enclosed please find an original and duplicate original Construction Agreement. Please review and sign both, then within ten (10) days return both to me along with your Payment Bond and Performance Bonds, each in the full amount of the Contract Price, as well as your Certificate of Insurance in the amounts required by the Agreement. When dating these documents, make sure all dates on all documents are the same. Return all the documents at the same time, in the same envelope.

Upon receipt of the two (2) executed copies of the Construction Agreement, the Town will execute both, then one fully executed original will be returned to you.

Should you have any questions, please call me at (970) 668-9150.

Sincerely,

Addison Canino, Assistant Public Works Director
Title: Project Manager

NOTICE TO PROCEED

Date: April XX, 2019

Mr. Scott Downen, President
Columbine Hills Concrete, Inc.
PO Box 2369
Silverthorne, CO 80498-2369

Re: 2nd and Belford Connector Pathway (TAP No. M500-004) (SA No. 22395)

Dear Mr. Downen:

This letter is your Notice to Proceed, effective as of the date of this letter. This notice is in reference to the Construction Agreement between you and the Town of Frisco concerning 2ND AND BELFORD CONNECTOR PATHWAY.

Please note that the Work shall commence within ten (10) days from the date of this letter, and that the Work shall be substantially completed within 42 days from the date of this letter.

Should you have any questions, please call me at (970) 668-9150.

Sincerely,

Addison Canino, Assistant Public Works Director
Title: Project Manager

COLORADO BID BOND

BOND NO. NOT APPLICABLE

AMOUNT OF BOND: \$ Five Percent (5%) of the Total Amount of the Bid

KNOW ALL MEN BY THESE PRESENTS, that COLUMBINE HILLS CONCRETE, INC.,* hereinafter called the PRINCIPAL, and WESTFIELD INSURANCE COMPANY, a corporation duly organized under the laws of the State of Ohio, having its principal place of business at 1 Park Circle, Westfield Center in the State of Ohio, and authorized to do business in the State of Colorado, as SURETY, are held and firmly bound unto the Town of Frisco, hereinafter called the OBLIGEE, in the sum of Five Percent (5%) of the Total Amount of the Bid DOLLARS (\$ _____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THIS BOND IS SUCH THAT:

WHEREAS, the PRINCIPAL is herewith submitting his Bid for:

2nd and Belford Connector Pathway

(Describe project)

said Bid, by this reference thereto being hereby made a part hereof; and

WHEREAS, the OBLIGEE has required as a condition for receiving said Bid that the PRINCIPAL furnish the OBLIGEE with security as provided herein;

NOW, THEREFORE, if the PRINCIPAL shall, within sixty (60) days after Bid Opening:

(A) On the prescribed forms presented to him for signature, enter into a written Formal Contract with the OBLIGEE in accordance with his Bid as accepted, give Performance and Payment Bonds with good and sufficient Surety or Sureties as is required upon the forms prescribed in the Contract Documents, and deliver the certificates of insurance required by the Contract Documents, or

(B) Pay to the OBLIGEE the said sum of this bond as liquidated damages, and not as a penalty,

THEN, this obligation shall be void and of no effect; otherwise to remain in full force and effect.

Signed and sealed this 1st day of October, 2018.



PRINCIPAL COLUMBINE HILLS CONCRETE, INC.

By: *Scott Dawner*
Scott Dawner, President

SURETY WESTFIELD INSURANCE COMPANY

By: *Cynthia M. Burnett*

Attorney-In-Fact *Cynthia M. Burnett*

General Power of Attorney

Westfield Insurance Co. Westfield National Insurance Co. Ohio Farmers Insurance Co. Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint CYNTHIA M. BURNETT, DOUGLAS J. ROTHEY, JOINTLY OR SEVERALLY

of LITTLETON and State of CO its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be it Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 13th day of MARCH A.D., 2015 .

Corporate Seals Affixed



WESTFIELD INSURANCE COMPANY WESTFIELD NATIONAL INSURANCE COMPANY OHIO FARMERS INSURANCE COMPANY

Handwritten signature of Dennis P. Baus

By: Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio County of Medina ss.:

On this 13th day of MARCH A.D., 2015, before me personally came Dennis P. Baus to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial Seal Affixed



Handwritten signature of David A. Kotnik

David A. Kotnik, Attorney at Law, Notary Public My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio County of Medina ss.:

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 1st day of October A.D., 2018



Handwritten signature of Frank A. Carrino Secretary

Frank A. Carrino, Secretary

EXHIBIT A2						
CONTRACTORS BID PROPOSAL - TOWN OF FRISCO						
SECOND AND BELFORD CONNECTOR PATHWAY						
CONSTRUCTION START DATE: MAY 01, 2019				COMPLETION DATE: JUNE 31, 2019		
ITEM NO.	CONTRACT ITEM NO.	CONTRACT ITEM	UNIT	ESTIMATED QUANTITY	TOTAL PRICE	NOTES
1	201-00000	CLEARING AND GRUBBING	LS	1	12,500.00	
2	202-00010	REMOVAL OF TREE	EACH	12	2,700.00	
3	202-00200	REMOVAL OF SIDEWALK	SY	40	1,000.00	
4	202-00202	REMOVAL OF GUTTER	LF	317	1,268.00	
5	202-00220	REMOVAL OF ASPHALT MAT	SY	1905	19,050.00	INCLUDE PAVEMENT SAWCUTTING
6	203-00000	UNCLASSIFIED EXCAVATION	CY	10	8,950.00	FOR EXPORT AS NECESSARY
7	203-00100	MUCK EXCAVATION	CY	1	465.00	FOR SOFT SUBGRADE REMOVAL AS DIRECTED BY ENGINEER
8	203-00067	EMBANKMENT MATERIAL (COMPLETE IN PLACE)	LS	1	24,000.00	FOR GRADING CUT/FILL TO SUBGRADE
9	203-01597	POTHOLING	HR	12	3,000.00	UTILITY POTHOLES AS NECESSARY
10	208-00000	EROSION CONTROL	LS	1	14,000.00	
11	210-00810	RESET GROUND SIGN	EACH	5	1,575.00	
12	210-04050	ADJUST VALVE BOX	EACH	8	600.00	
13	210-04010	ADJUST MANHOLE	EACH	1	2,250.00	
14	212-00006	SEEDING (NATIVE)	ACRE	0.75	4,500.00	APPROX. SEEDED AREA
15	304-06000	AGGREGATE BASE COURSE (CLASS 6)	TON	1166	46,474.00	
16	306-01000	RECONDITIONING	SY	4072	3,054.00	SUBGRADE PREPARATION UNDER PAVED SURFACES
17	403-34721	HOT MIX ASPHALT (GRADING SX)(75)(PG 58-28)	TON	726	85,668.00	
18	604-39012	MANHOLE SPECIAL (10 FOOT)(6' DIA. DRYWELL)	EACH	3	13,200.00	
19	605-82201	DRYWELL	EACH	5	12,750.00	
20	608-00000	CONCRETE SIDEWALK	SY	29	3,393.00	
21	608-00010	CONCRETE CURB RAMP	SY	117	30,480.00	
22	608-00015	DETECTABLE WARNINGS	SF	476	20,468.00	
23	609-21020	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	20	1,520.00	
24	609-24003	GUTTER TYPE 2 (3 FOOT)	LF	1645	47,705.00	
25	609-24008	GUTTER TYPE 2 (8 FOOT)	LF	82	7,380.00	
26	609-24010	GUTTER TYPE 2 (10 FOOT)	LF	36	5,040.00	
27	609-24012	GUTTER TYPE 2 (12 FOOT)	LF	26	5,070.00	
28	625-00000	CONSTRUCTION SURVEYING	LS	1	6,225.00	
29	626-00000	MOBILIZATION	LS	1	21,000.00	
30	630-10005	TRAFFIC CONTROL	LS	1	47,000.00	

TOTAL PRICE \$ 451,225.00

Contractors Bid Total \$ 451,225.00

Four hundred fifty one thousand two hundred twenty five dollars and zero cents
(written total)

Submitted By Columbine Hills Concrete, Inc.
(company)

Scott Daumen

(Authorized Personnel, Printed Name)

Scott Daumen

10/11/2018
(Date of Bid)



**COLORADO DEPARTMENT OF TRANSPORTATION
ANTI-COLLUSION AFFIDAVIT**

PROJECT NO.
TaP No. 811 500-004 / SA No. 22395

LOCATION
2ND and Belford Connector Pathway.

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.
- 2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.
- 2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.
- 3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
- 3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.
4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.
8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

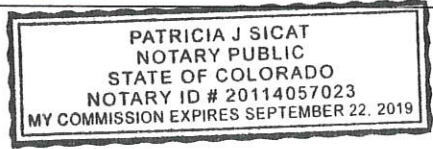
I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name	By <i>[Signature]</i>	Date <i>10-1-2018</i>
<i>Columbine Hills Concrete, Inc</i>	Title <i>President</i>	
2nd contractor's firm or company name. (If joint venture.)	By	Date
	Title	

Sworn to before me this *1* day of *October* 20 *18*

Notary Public *Patricia J Sicat*

My commission expires *9-22-2019*



NOTE: This document must be signed in ink.

COLORADO DEPARTMENT OF TRANSPORTATION
CONTRACTORS PERFORMANCE CAPABILITY STATEMENT

Project #
TAP No. M500-004
SA No. 22395

1. List names of partnerships or joint ventures none

2. List decreases in the contractors fiscal or workmanship qualifications compared to the last prequalification statement submitted to CDOT. (Attach additional sheets if necessary.)

a. Key personnel changes none

b. Key equipment changes none

c. Fiscal capability changes (legal actions, etc.) none

d. Other changes that may effect the contractors ability to perform work. none

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Contractor's firm or company name

By

Date

Columbine Hills Concrete, Inc.

Title

President

10-1-2018

2nd Contractor's firm or company name (if joint venture)

By

Date

Title


**COLORADO DEPARTMENT OF TRANSPORTATION
ASSIGNMENT OF ANTITRUST CLAIMS**

PROJECT NO
TAP No. M500-04
SA No. 22395

Contractor and Colorado Department of Transportation (CDOT) recognize that in actual economic practice antitrust violations ultimately impact on CDOT. Therefore, for good cause and as consideration for executing this contract and for receiving payments hereunder:

1. Contractor hereby irrevocably assigns to CDOT any and all claims it may now have or which may hereafter accrue to it under federal or state antitrust laws in connection with the particular project, goods or services purchased or acquired by CDOT pursuant to this contract.
2. Contractor hereby expressly agrees:
 - a. That, upon becoming aware that a third party has commenced a civil action asserting on Contractor's behalf an antitrust claim which has been assigned to CDOT hereunder, Contractor shall immediately advise in writing:
 - (1) Such third party that the antitrust claim has been assigned to CDOT, and
 - (2) CDOT that such civil action is pending and of the date on which, in accordance with subparagraph a. (1) above, Contractor notified such third party that the antitrust claim had been assigned to CDOT;
 - b. To take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
 - c. Promptly to pay over to CDOT its proper share of any payment under an antitrust claim brought on Contractor's behalf by any third party and which claim has been assigned to CDOT hereunder.
3. Further, Contractor agrees that in the event it hires one or more subcontractors to perform any of its duties under the contract, Contractor shall require that each such subcontractor:
 - a. Irrevocably assign to CDOT (as a third party beneficiary) any and all claims that such subcontractor may have or which may thereafter accrue to the subcontractor under federal or state antitrust laws in connection with any goods or services provided by the subcontractor in carrying out the subcontractor's obligations to Contractor;
 - b. Upon becoming aware that a third party has commenced a civil action on the subcontractor's behalf asserting an antitrust claim which has been assigned to CDOT hereunder, shall immediately advise in writing:
 - (1) Such third party that the antitrust claim has been assigned to CDOT, and
 - (2) Contractor and CDOT that such civil action is pending and of the date on which, in accordance with subparagraph b. (1) above, the subcontractor notified such third party that the antitrust claim had been assigned to CDOT;
 - c. Take no action which will in any way diminish the value of the claims or rights assigned or dedicated to CDOT hereunder; and
 - d. Promptly pay over to CDOT its proper share of any payment under an antitrust claim brought on the subcontractor's behalf by any third party and which claim has been assigned or dedicated to CDOT pursuant hereto.

I, acting in my capacity as officer of a bidder (bidders if a joint venture) do agree to the above assignment of antitrust claims.

Contractor's firm or company name Columbine Hills Concrete, Inc.	By 	Date 10-1-2018
	Title President	
2nd contractor's firm or company name. (If joint venture.)	By	Date
	Title	

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

Copyright © 2013:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology	1
1.01 Defined Terms	1
1.02 Terminology	5
Article 2 – Preliminary Matters.....	6
2.01 Delivery of Bonds and Evidence of Insurance.....	6
2.02 Copies of Documents	6
2.03 Before Starting Construction	6
2.04 Preconstruction Conference; Designation of Authorized Representatives	7
2.05 Initial Acceptance of Schedules	7
2.06 Electronic Transmittals.....	7
Article 3 – Documents: Intent, Requirements, Reuse	8
3.01 Intent.....	8
3.02 Reference Standards	8
3.03 Reporting and Resolving Discrepancies	8
3.04 Requirements of the Contract Documents	9
3.05 Reuse of Documents	10
Article 4 – Commencement and Progress of the Work	10
4.01 Commencement of Contract Times; Notice to Proceed	10
4.02 Starting the Work.....	10
4.03 Reference Points	10
4.04 Progress Schedule	10
4.05 Delays in Contractor’s Progress	11
Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions	12
5.01 Availability of Lands	12
5.02 Use of Site and Other Areas.....	12
5.03 Subsurface and Physical Conditions.....	13
5.04 Differing Subsurface or Physical Conditions	14
5.05 Underground Facilities.....	15

5.06	Hazardous Environmental Conditions at Site	17
Article 6 – Bonds and Insurance		19
6.01	Performance, Payment, and Other Bonds	19
6.02	Insurance—General Provisions	19
6.03	Contractor’s Insurance	20
6.04	Owner’s Liability Insurance	23
6.05	Property Insurance	23
6.06	Waiver of Rights	25
6.07	Receipt and Application of Property Insurance Proceeds	25
Article 7 – Contractor’s Responsibilities		26
7.01	Supervision and Superintendence	26
7.02	Labor; Working Hours	26
7.03	Services, Materials, and Equipment.....	26
7.04	“Or Equals”	27
7.05	Substitutes	28
7.06	Concerning Subcontractors, Suppliers, and Others	29
7.07	Patent Fees and Royalties	31
7.08	Permits	31
7.09	Taxes	32
7.10	Laws and Regulations.....	32
7.11	Record Documents.....	32
7.12	Safety and Protection.....	32
7.13	Safety Representative	33
7.14	Hazard Communication Programs	33
7.15	Emergencies	34
7.16	Shop Drawings, Samples, and Other Submittals.....	34
7.17	Contractor’s General Warranty and Guarantee.....	36
7.18	Indemnification	37
7.19	Delegation of Professional Design Services	37
Article 8 – Other Work at the Site		38
8.01	Other Work	38
8.02	Coordination	39
8.03	Legal Relationships.....	39

Article 9 – Owner’s Responsibilities.....	40
9.01 Communications to Contractor.....	40
9.02 Replacement of Engineer	40
9.03 Furnish Data	40
9.04 Pay When Due.....	40
9.05 Lands and Easements; Reports, Tests, and Drawings	40
9.06 Insurance.....	40
9.07 Change Orders.....	40
9.08 Inspections, Tests, and Approvals.....	41
9.09 Limitations on Owner’s Responsibilities	41
9.10 Undisclosed Hazardous Environmental Condition.....	41
9.11 Evidence of Financial Arrangements.....	41
9.12 Safety Programs	41
Article 10 – Engineer’s Status During Construction.....	41
10.01 Owner’s Representative.....	41
10.02 Visits to Site.....	41
10.03 Project Representative.....	42
10.04 Rejecting Defective Work.....	42
10.05 Shop Drawings, Change Orders and Payments.....	42
10.06 Determinations for Unit Price Work	42
10.07 Decisions on Requirements of Contract Documents and Acceptability of Work	42
10.08 Limitations on Engineer’s Authority and Responsibilities.....	42
10.09 Compliance with Safety Program.....	43
Article 11 – Amending the Contract Documents; Changes in the Work	43
11.01 Amending and Supplementing Contract Documents	43
11.02 Owner-Authorized Changes in the Work.....	44
11.03 Unauthorized Changes in the Work.....	44
11.04 Change of Contract Price	44
11.05 Change of Contract Times.....	45
11.06 Change Proposals.....	45
11.07 Execution of Change Orders.....	46
11.08 Notification to Surety.....	47
Article 12 – Claims.....	47

12.01	Claims	47
Article 13	– Cost of the Work; Allowances; Unit Price Work.....	48
13.01	Cost of the Work	48
13.02	Allowances	50
13.03	Unit Price Work	51
Article 14	– Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....	52
14.01	Access to Work.....	52
14.02	Tests, Inspections, and Approvals.....	52
14.03	Defective Work.....	53
14.04	Acceptance of Defective Work.....	53
14.05	Uncovering Work	53
14.06	Owner May Stop the Work	54
14.07	Owner May Correct Defective Work.....	54
Article 15	– Payments to Contractor; Set-Offs; Completion; Correction Period	55
15.01	Progress Payments	55
15.02	Contractor’s Warranty of Title	58
15.03	Substantial Completion	58
15.04	Partial Use or Occupancy	59
15.05	Final Inspection	59
15.06	Final Payment.....	59
15.07	Waiver of Claims	61
15.08	Correction Period	61
Article 16	– Suspension of Work and Termination	62
16.01	Owner May Suspend Work	62
16.02	Owner May Terminate for Cause.....	62
16.03	Owner May Terminate For Convenience	63
16.04	Contractor May Stop Work or Terminate	63
Article 17	– Final Resolution of Disputes	64
17.01	Methods and Procedures.....	64
Article 18	– Miscellaneous	64
18.01	Giving Notice	64
18.02	Computation of Times.....	64
18.03	Cumulative Remedies	64

18.04	Limitation of Damages	65
18.05	No Waiver	65
18.06	Survival of Obligations	65
18.07	Controlling Law	65
18.08	Headings.....	65

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic Instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. ***Bonds:*** When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. ***Evidence of Contractor's Insurance:*** When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. ***Evidence of Owner's Insurance:*** After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. ***Preliminary Schedules:*** Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.
- 4.05 *Delays in Contractor's Progress*
- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. ***Builder's Risk:*** Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with Instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. **Engineer's Evaluation and Determination:** Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. **Special Guarantee:** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. **Reimbursement of Engineer's Cost:** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. **Contractor's Expense:** Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. **Effect of Engineer's Determination:** If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. **Contractor's Fee:** When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

COLORADO
DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS

◆
STANDARD SPECIAL PROVISIONS

Name	Date	No. of Pages
Revision of Section 103 – Consideration of Proposals	(July 3, 2017)	1
Revision of Section 105 – Construction Drawings	(July 3, 2017)	1
Revision of Section 106 – Supplier List	(July 3, 2017)	1
Revision of Section 107 – Laws to be Observed	(October 12, 2017)	1
Revision of Section 108 – Liquidated Damages	(July 20, 2017)	1
Revision of Section 108 – Subletting of Contract	(October 12, 2017)	1
Revision of Section 109 – Prompt Payment (Local Agency)	(July 3, 2017)	2
Revision of Section 208 – Erosion Control	(July 3, 2017)	1
Revision of Section 250 – Environmental, Health and Safety Management	(July 3, 2017)	3
Revision of Section 703 - Classification for Aggregate Base Course	(October 12, 2017)	1
Affirmative Action Requirements – Equal Employment Opportunity	(July 3, 2017)	10
Disadvantaged Business Enterprise (DBE) Requirements (Local Agency)	(July 3, 2017)	9
Minimum Wages, Colorado, U.S. Department of Labor General Decision Number CO180023, MOD 2, Highway Construction for Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, and Summit counties.	(July 13, 2018)	8
On the Job Training	(July 3, 2017)	3
Required Contract Provisions – Federal-Aid Construction Contracts	(July 3, 2017)	14

July 3, 2017

REVISION OF SECTION 103
CONSIDERATION OF PROPOSALS

Section 103 of the Standard Specifications is hereby revised for this project as follows:

Delete subsection 103.01 and replace with the following:

103.01 Consideration of Proposals. After the proposals (bids) are opened and read, they will be evaluated and the Contract awarded or rejected in accordance with the "Rules" referenced in subsection 102.01

The low responsible bidder shall submit a completed CONTRACTORS PERFORMANCE CAPABILITY STATEMENT, Form 605, and a completed ASSIGNMENT OF ANTITRUST CLAIMS, Form 621 to the Award Officer prior to 4:30 P.M. on the fifth calendar day after the bid opening.

In order to be eligible for contracting with CDOT, the apparent low responsible bidder shall register with the B2GNow software system on or before the fifth calendar day after the bid opening and shall update the registration on an annual basis.

Failure to submit the Forms 605 and 621 and to register with the B2G Now software system may result in the denial of award to the apparent low responsible bidder and forfeiture of the proposal guaranty.

July 3, 2017

REVISION OF SECTION 105
CONSTRUCTION DRAWINGS

Section 105 of the Standard Specifications is hereby revised for this project as follows:

Delete subsection 105.02(f).

July 3, 2017

REVISION OF SECTION 106
SUPPLIER LIST

Section 106 of the Standard Specifications is hereby revised for this project as follows:

In subsection 106.01 delete the fourth and 5th paragraphs and replace with the following:

All companies that will provide \$10,000 or more in supplies or materials on any CDOT project must be registered in the B2GNow software system and shall update the registration on an annual basis.

Prior to beginning any work on the project, the Contractor shall submit to the Engineer a completed Form 1425, Supplier List documenting all companies providing \$10,000 or more of supplies or materials directly to the Contractor for the project. This list shall not include companies also responsible for the installation of the supplies or materials. During the performance of the project, the Contractor shall submit an updated Form 1425 if one or more of these companies change.

The Contractor shall require each subcontractor to submit a Form 1425 listing all companies providing \$10,000 or more of supplies or materials to the subcontractor. The Contractor shall submit the subcontractor's Form 1425 with Form 205.

Failure to comply with the requirements of this subsection shall be grounds for withholding of progress payments.

October 12, 2017

**REVISION OF SECTION 107
LAWS TO BE OBSERVED**

Section 107 of the Standard Specifications is hereby revised for this project as follows:

Subsection 107.01 shall include the following after the first paragraph:

Failure to comply with all contractual obligations may lead to the suspension, debarment or both of the Contractor as stipulated in the "Rules".

July 20, 2017

REVISION OF SECTION 108
LIQUIDATED DAMAGES

Section 108 of the Standard Specifications is hereby revised for this project as follows:

In subsection 108.09 delete the schedule of liquidated damages and refer to Section 7.03 of Exhibit A to Construction Agreement

October 12, 2017

**REVISION OF SECTION 108
SUBLETTING OF CONTRACT**

Section 108 of the Standard Specifications is hereby revised for this project as follows:

Subsection 108.01 shall include the following:

Failure to comply with all contractual obligations may lead to the suspension, debarment, or both of the subcontractor, and if necessary, the Contractor as stipulated in the "Rules".

All firms to which the Contractor will be subletting a portion of the Contract must be registered in the B2GNow Software System and shall update the registration on an annual basis. If the firm is not registered, approval of the Form 205 may be withheld.

1
REVISION OF SECTION 109
PROMPT PAYMENT
(LOCAL AGENCY)

Section 109 of the Standard Specifications is hereby revised for this project as follows:

Delete subsection 109.06(e) and replace with the following:

- (e) *Prompt Payment.* The Contractor shall pay subcontractors and suppliers for all work which has been satisfactorily completed within seven calendar days after receiving payment for that work from the Local Public Agency (LPA). For the purpose of this section only, work shall be considered satisfactorily complete when the LPA has made payment for the work. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to subcontractors and suppliers must be included in all subcontracts at every tier. The Contractor shall ensure that all subcontractors and suppliers at every tier are promptly paid. If the Contractor or its subcontractors fail to comply with this provision, the Engineer will not authorize further progress payment for work performed directly by the Contractor or the noncompliant subcontractor until the required payments have been made. The Engineer will continue to authorize progress payments for work performed by compliant subcontractors.

Delete subsection 109.06(f)5 and replace with the following:

5. In determining whether satisfactory completion has been achieved, the Contractor may require the subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the subcontractor's work have been paid in full. The Contractor may also require any documentation from the subcontractor that is required by the subcontract or by the Contract between the Contractor and the LPA or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the subcontractor's work.

Delete subsection 109.06(f)8 and replace with the following:

8. If additional quantities of a particular item of work are required at a later date after final measurement has been made, the Contractor shall perform this work in accordance with Contract requirements and at unit bid prices.

For this subsection only, satisfactory completion of all work described on CDOT Form No. 205 is when all tasks called for in the subcontract as amended by changes directed by the Engineer have been accomplished and documented as required by the LPA.

The requirements stated above do not apply to retainage withheld by the LPA from monies earned by the Contractor. The LPA will continue to process the release of that retainage based upon the completion date of the project as defined in the Commencement and Completion of Work special provision.

Delete subsection 109.06(f)9 and replace with the following:

9. If during the prosecution of the project a portion of the work is partially accepted in accordance with subsection 105.21(a), the Contractor shall release all subcontractors' retainage on the portion of the partially accepted work performed by subcontractors. Prior to the LPA releasing the Contractor's retainage on work that has been partially accepted in accordance with subsection 105.21(a), the Contractor shall submit to the Engineer a certified statement for each subcontractor that has participated in the partially accepted work. The statement shall certify that the subcontractor has been paid in full for its portion of the partially accepted work including release of the subcontractor's retainage. The statement shall include the signature of a legally responsible official for the Contractor, and the signature of a legally responsible official for the subcontractor.

Delete subsection 109.06(g) and replace with the following:

REVISION OF SECTION 109
PROMPT PAYMENT
(LOCAL AGENCY)

- (g) *Good Cause Exception.* If the Contractor has "good cause" to delay or withhold a subcontractor's progress payment, the Contractor shall notify the LPA and the subcontractor in writing within seven calendar days after receiving payment from the LPA. The notification shall specify the amount being withheld and provide adequate justification for withholding the payment. The notice shall also clearly state what conditions the subcontractor must meet to receive payment. "Good cause" shall include but not be limited to the failure of the subcontractor to make timely submission of required paperwork.

Delete subsection 109.06(h) and replace with the following:

- (h) *Monthly Reporting.* On a monthly basis, the Contractor shall submit the Form 1418, Monthly Payment Report, to the Engineer along with the project schedule updates, in accordance with subsections 108.03(g). Failure to submit a complete and accurate Form 1418 shall be grounds for CDOT to withhold subsequent payments or retainage from the Contractor.

1
REVISION OF SECTION 208
EROSION CONTROL

Section 208 of the Standard Specifications is hereby revised for this project as follows:

In subsection 208.03(c) delete the first paragraph and replace it with the following

Erosion Control Management (ECM). Erosion Control Management for this project shall consist of Erosion Control Inspection and the SWMP Administration. All ECM staff shall have working knowledge and experience in construction, and shall have successfully completed the Transportation Erosion Control Supervisory Certificate Training (TECS) as provided by the Department. The Superintendent will not be permitted to serve in an ECM role. The Erosion Control Inspector (ECI) and the SWMP Administrator may be the same person in projects involving less than 40 acres of disturbed area.

In subsection 208.03(c)1 delete the first paragraph and replace it with the following:

SWMP Administration. The SWMP shall be maintained by a SWMP Administrator. In the case of a project requiring only one TECS, the SWMP Administrator may also be the ECI for the project. The name of the SWMP Administrator shall be recorded on the SWMP Section 3. B. The SWMP Administrator shall have full responsibility to maintain and update the SWMP and identify to the Superintendent critical action items needed to conform to the CDPS-SCP as follows:

In subsection 208.03(c)2 delete the first paragraph and replace it with the following:

One ECI is required for every 40 acres of total disturbed area which is currently receiving temporary and interim stabilization measures as defined in subsection 208.04 (e). An ECI shall not be responsible for more than 40 acres in the project. Accepted permanent stabilization methods as defined in subsection 208.04 (e) will not be included in the 40 acres.

In subsection 208.03(d)1 delete item (1) and replace it with the following:

- (1) SWMP Site Maps and Plan Title Sheet - Construction site boundaries, ground surface disturbance, limits of cut and fill, flow arrows, structural BMPs, non-structural BMPs, Springs, Streams, Wetlands and surface water. Also included on the sheets is the protection of trees, shrubs and cultural resources.

In subsection 208.05(n), in the list of requirements for pre-fabricated concrete washout structures, delete item (2) and replace it with the following:

- (2) Structure shall be located 50 horizontal feet away from State waters, and shall be confined so that no potential pollutants will enter State waters and other sensitive areas as defined in the Contract. Locations shall be as approved by the Engineer. The site shall be signed as "Concrete Washout".

In subsection 208.11 delete the first paragraph and replace it with the following:

Erosion Control Management will be measured as the actual number of days of ECM work performed, regardless of the number of personnel required for SWMP Administration and Erosion Control Inspection, including erosion control inspections, documentation, meeting participation, SWMP Administration, and the preparation of the SWMP notebook. If the combined hours of SWMP Administration and Erosion Control Inspection is four hours or less in a day, the work will be measured as ½ day. If the combined hours of SWMP Administration and Erosion Control Inspection is more than four hours in a day, the work will be measured as one day. Total combined hours of ECM work exceeding eight hours in a day will still be paid as one day.

1
REVISION OF SECTION 250
ENVIRONMENTAL, HEALTH AND SAFETY MANAGEMENT

Section 250 of the Standard Specifications is hereby revised for this project as follows:

In subsection 250.03 delete the second paragraph and replace with the following:

This project may be in the vicinity of property associated with petroleum products, heavy metal based paint, landfill, buried foundations, abandoned utility lines, industrial area or other sites which can yield hazardous substances or produce dangerous gases. These hazardous substances or gases can migrate within or into the construction area and could create hazardous conditions. The Contractor shall use appropriate methods to reduce and control known landfill, industrial gases, and visible emissions from asbestos encounters and hazardous substances which exist or migrate into the construction area. The Contractor shall follow CDOT's Regulated *Asbestos-Contaminated Soil Management Standard Operating Procedure, dated October 18, 2016* for proper handling of asbestos-contaminated soil, and follow all applicable Solid and Hazardous Waste Regulations for proper handling of soils encountered that contain any other substance mentioned above.

In subsection 250.03(a) delete the second paragraph and replace with the following:

When regulated asbestos contaminated soil (RACS) is present or is suspected to be present on or near a project, the HSO shall have knowledge of RACS regulations. The HSO shall meet the minimum training and medical surveillance requirements established by the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) for a supervisory Site Safety Official per 29 CFR 1962.65. The Contractor shall furnish documentation to the Engineer, at the preconstruction conference, that the above requirements have been met. Certification as an Asbestos Building Inspector in accordance with subsection 250.03 (b) is recommended.

In subsection 250.03(b) delete the first and second paragraphs and replace with the following:

The Contractor shall designate a monitoring technician to be responsible for monitoring of hazardous substances during work on the project. The MT shall have a minimum of two years of actual field experience in assessment and remediation of hazardous substances that may be encountered during highway construction projects. When asbestos is present or is suspected to be present on or near a project, the MT shall have additional 40 hours experience in RACS project management and certification as an Asbestos Building Inspector in accordance with the Colorado Air Quality Control Commission Regulation No. 8 Part B. The MT shall be experienced in the operation of monitoring devices, identifying substances based upon experience and observation, and field sampling (for testing) of all media that may be found on the site. Completion of the 40 hour hazardous waste and 8 hour supervisory training required by OSHA and U.S. EPA rules and regulations which complies with the accreditation criteria under the provisions of the proposed 29 CFR 1910.121 is required prior to beginning work. The Contractor shall furnish documentation at the Preconstruction Conference that demonstrates these requirements have been met.

The MT shall be equipped with the following:

- (1) Communication equipment as required in subsection 250.03(d) 2.A. and a vehicle.
- (2) Monitoring and detection equipment for flammable gas, oxygen sufficiency, toxic gas, radiological screening and other hazards. This includes, as required, a combustible gas indicator, flame ionization or photo ionization detector, oxygen meter, radiation monitor with Geiger Mueller detector and other foreseeable equipment.
- (3) Depth gauging equipment, sampling equipment and sampling containers.
- (4) Personal protective equipment (levels C and D) when required.

Delete subsection 250.07 and replace with the following:

250.07 Regulated Asbestos Contaminated Soils (RACS) Management. Environmental documents or plans listed in the special provisions should include known or suspected locations that could involve encounters with RACS during excavation and other soil disturbing construction activities. Unexpected discoveries of RACS may occur during excavation and soil disturbing construction activities. RACS shall be properly managed or remediated, in accordance with subsection 250.07(a).

2
 REVISION OF SECTION 250
 ENVIRONMENTAL, HEALTH AND SAFETY MANAGEMENT

All asbestos related activities shall be performed by CDPHE certified asbestos professionals, contractors, or consultants. Certifications are issued by the CDPHE, Indoor Air Quality Unit. A Colorado Certified Asbestos Building Inspector shall manage the assessment and disposal of RACS and other ACM. The Indoor Air Quality Unit within CDPHE is the only unit that certifies such professionals. The Contactor shall furnish a copy of the certification to the Engineer.

- (a) *Regulatory Compliance.* RACS management is governed by 6 CCR 1007-2, Section 5.5, which includes and references regulatory compliance with Colorado Air Quality Control Commission *Regulation* No. 8 Part B-Asbestos. Colorado Regulation No. 8 governs all asbestos activities, demolition, permitting, and certification of Certified Asbestos Professionals in the State of Colorado. The Contractor shall conform to all current regulations, policy directives, or both, issued by the CDPHE, and the Department.
- (b) *Asbestos Management and Visual Inspections* Asbestos management shall be performed by a CDPHE certified asbestos building inspector. All inspections of the area of asbestos contaminated soil removal shall be performed by a CDPHE certified Asbestos Building Inspector to determine what, if any, controls must be instituted to allow future activity in the excavation area.
- (c) *Permitting and Notification.* The CDPHE requires notification of any soil disturbing activity where asbestos is known, suspected, or discovered. A 24-hour notification to CDPHE is required after any soil disturbing activity of an unplanned asbestos discovery. A 10 working day notification to CDPHE is required prior to any soil disturbing activity in an area with known or potential RACS. Removal of asbestos-containing material on a facility component, that is located on or in soil that will be disturbed, with asbestos quantities above the following trigger levels shall be permitted and abated in accordance with the requirements of Colorado Air Quality Control Commission Regulation No. 8 (5 CCR 1001-10, Part B):
- (1) 260 linear feet on pipes,
 - (2) 160 square feet on other surfaces, or
 - (3) The volume of a 55-gallon drum.

All permit applications shall be submitted to the Colorado Department of Public Health and Environment a minimum of 10 days prior to start of work for approval. The permit application and notification shall be submitted simultaneously. A CDPHE certified General Abatement Contractor shall obtain all required State and local permits and shall be responsible for all associated fees. Permit application, notification, and waiver request forms shall be submitted to:

Colorado Department of Public Health and Environment Permit Coordinator/APCD - SS - B1 4300
 Cherry Creek Drive South Denver, CO 80246-1530 Phone: (303) 692-3100 Fax: (303) 782-0278

Application and waiver forms are available on the CDPHE website: asbestos@state.co.us

- (d) *CDOT's Regulated Asbestos-Contaminated Soil Management Standard Operating Procedure, dated October 18, 2016.* Asbestos contaminated soil shall be managed in accordance with 6 CCR 1007-2, Part 1, Section 5.5, Management of RACS. . Regulations apply only upon unexpected discovery of asbestos materials during excavation and soil disturbing activities on construction projects, or when asbestos encounters are expected during construction. The Contractor shall comply with procedures detailed in the *CDPHE's Management of Regulated Asbestos Contaminated Soil Regulation* and CDOT's CDPHE approved *Regulated Asbestos-Contaminated Soil Management Standard Operating Procedure, dated October 18, 2016*, including the following minimum requirements:
- (1) Immediate actions and implementation of interim controls to prevent visible emissions, exposure, and asbestos contamination in surrounding areas.
 - (2) Soil Characterization.
 - (3) Training required for all personnel involved in excavation and other soil disturbing activities, once asbestos is encountered during construction or on projects where asbestos encounters are expected.

3
REVISION OF SECTION 250
ENVIRONMENTAL, HEALTH AND SAFETY MANAGEMENT

Asbestos Awareness Training shall be given by a qualified and certified Asbestos Building Inspector with a minimum of six months experience inspecting asbestos contaminated soil.

- (4) Assessment for the presence and extent, within the proposed area of disturbance, of asbestos discoveries, whether expected or unexpected, by a CDPHE Certified Asbestos Building Inspector.
 - (5) Investigation and sampling required for risk assessment and management. Investigation, if required, shall be conducted by a CDPHE Certified Asbestos Building Inspector.
 - (6) Risk assessment and determinations for further management or abatement.
 - (i) Risk assessment and determinations must be made by a CDPHE Certified Asbestos Building Inspector, and coordinated with the Engineer.
 - (ii) Soil remediation is not necessarily required, depending on the circumstances.
 - (7) Submit CDPHE 24-hour Notification form for unexpected RACS discovery included in Attachment 1 of the CDOT Regulated Asbestos-Contaminated Soil Management Standard Operating Procedure
 - (8) Submit CDPHE 10-day Notification form for planned RACS management included in Attachment 1 of the CDOT Regulated Asbestos-Contaminated Soil Management Standard Operating Procedure.
- (e) *Risk Assessment and Determinations for Further Management Or Remediation.* Risk assessment and determinations for further management or remediation must be closely coordinated with the Project Engineer and Project Manager of the Statewide Management Plan.

**REVISION OF SECTION 703
CLASSIFICATION FOR AGGREGATE BASE COURSE**

Section 703 of the Standard Specifications is hereby revised for this project as follows:

In subsection 703.03, delete Table 703-2 and replace with the following:

**Table 703-2
CLASSIFICATION FOR AGGREGATE BASE COURSE**

Sieve Size	Mass Percent Passing Square Mesh Sieves						
	LL not greater than 35			LL not greater than 30			
	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7
150mm (6")			100				
100mm (4")		100					
75mm (3")		95-100					
60mm (2 1/2")	100						
50mm (2")	95-100			100			
37.5mm (1.5")				90-100	100		
25mm (1")					95-100	100	100
19mm (3/4")				50-90		95-100	
4.75mm (#4)	30-65			30-50	30-70	30-65	
2.36mm (#8)						25-55	20-85
75 μ m (#200)	3-15	3-15	20 max	3-12	3-15	3-12	5-15
NOTE: Class 3 material shall consist of bank or pit run material.							

1
**AFFIRMATIVE ACTION REQUIREMENTS
 EQUAL EMPLOYMENT OPPORTUNITY**

A. AFFIRMATIVE ACTION REQUIREMENTS

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Goals and Timetable for Minority Utilization

Timetable - Until Further Notice			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
	2670 Fort Collins	Larimer.....	6.9%
	3060 Greeley	Weld.....	13.1%
	Non SMSA Counties	Cheyenne, Clear Creek, Elbert, Grand, Kit Carson, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington & Yuma.....	12.8%
158 (Colo. Spgs. - Pueblo)	1720 Colorado Springs	El Paso, Teller.....	10.9%
	6560 Pueblo	Pueblo.....	27.5%
	Non SMSA Counties	Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Rio Grande, Saguache.....	19.0%
159 (Grand Junction)	Non SMSA	Archuleta, Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	10.2%
156 (Cheyenne - Casper WY)	Non SMSA	Jackson County, Colorado.....	7.5%
GOALS AND TIMETABLES FOR FEMALE UTILIZATION			
Until Further Notice.....6.9% -- Statewide			

**AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY**

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Par 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this specification, and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the Invitation for Bids and on the plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these Specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractor toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source of community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

- g. Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and Contractor's activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.

1. *General.*

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract. Provisions (Form FHWA 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract provisions.
- b. The Contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The Contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The Contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The Contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program;

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

3. *Equal Employment Opportunity Officer.* The Contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (herein after referred to as the EEO Officer) who will have the responsibility for an must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.*

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

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

**AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY**

- (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the Contractor.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.
- b. In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:
 - (1) Notices and posters setting forth the Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The Contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment.

- a. When advertising for employees, the Contractor will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

- c. The Contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions. Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed;

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

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

- b. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of his avenues of appeal.
7. *Training and Promotion.*
- a. The Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
 - c. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
8. *Unions.* If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - b. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
 - c. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

AFFIRMATIVE ACTION REQUIREMENTS
EQUAL EMPLOYMENT OPPORTUNITY

- d. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Contractor shall immediately notify the State highway agency.

9. *Subcontracting.*

- a. The Contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.
- b. The Contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.*

- a. The Contractor will keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor will be designed to indicate:
- (1) The number of minority and nonminority group members and women employed in each work classification on the project.
 - (2) The Progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.
- c. The Contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391.

1
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

1. Overview

The Disadvantaged Business Enterprise (DBE) Program is a federally-mandated program that seeks to ensure non-discrimination in the award of U.S. Department of Transportation (DOT)-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts. Local Public Agencies (LPAs) that receive federal funds, must comply with CDOT's DBE program. To such end, CDOT sets a contract goal for DBE participation for each DOT-assisted LPA Contract.

In order to be awarded the Contract, the bidder shall show that it has committed to DBE participation sufficient to meet the goal or has otherwise made good faith efforts to do so. CDOT will amend the goal prior to award if the lowest apparent bidder demonstrates that good faith efforts were made but sufficient commitments to meet the goal could not be obtained.

CDOT and the LPA will monitor the progress of the Contractor throughout the project to ensure that the Contractor's DBE commitments are being fulfilled. Modifications to the commitments must be approved by the CDOT Regional Civil Rights Office (RCRO). CDOT may withhold payment or seek other contractual remedies if the Contractor is not complying with the requirements of this special provision. Upon completion of the Contract, CDOT may require the LPA to reduce the final payment to the Contractor if the Contractor has failed to fulfill the commitments or made good faith efforts to meet the contract goal.

For general assistance regarding the DBE program and compliance, contact CDOT's Civil Rights and Business Resource Center (CRBRC) at (303)757-9234. For project specific issues, contact the LPA Engineer or RCRO.

All forms referenced herein can be found on the CDOT website in the forms library.

2. Contract Assurance

By submitting a proposal for this Contract, the bidder agrees to the following assurance and shall include it verbatim in all (including non-DBE) subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

3. Definitions

Terms not defined herein shall have the meaning provided in the CDOT Standard Specifications for Road and Bridge Construction.

- A. *Commitment.* A commitment is a portion of the Contract, identified by dollar amount and work area, designated by the bidder or Contractor for participation by a particular DBE. Commitments are submitted to CDOT via Form 1414, Anticipated DBE Participation Plan, or via Form 1420, DBE Plan Modification Request. Once approved, commitments are enforceable obligations of the Contract.
- B. *Commercially Useful Function (CUF).* Responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing and supervising the work as further described in Section 8 below.
- C. *Contract Goal.* The percentage of the contract designated by CDOT for DBE participation. The contract goal for this contract is provided in the Project Special Provision Disadvantaged Business Enterprise

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

Contract Goal.

- (1) The bidder/Contractor shall make good faith efforts to fulfill the contract goal with eligible DBE participation. For determining whether the contract goal was met prior to award, the contract goal shall be based upon the proposal amount excluding force account items. For determining whether the contract goal was met during and upon completion of the project, the contract goal shall be based upon the total earnings amount.
- (2) If the lowest apparent bidder demonstrates that it was unable to meet the contract goal but made good faith efforts to do so, the contract goal will be amended and the revised contract goal will be provided on Form 1417, Approved DBE Participation Plan.

- D. *Disadvantaged Business Enterprise (DBE)*. A Colorado-certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.
- E. *DBE Program Manual*. The manual maintained by the CRBRC which details CDOT's policies and procedures for administering the DBE program. A copy of the DBE Program Manual is available on the CRBRC webpage.
- F. *Eligible Participation*. Work by a DBE that counts toward fulfillment of the contract goal as described in Section 4 below.
- G. *Good Faith Efforts*. All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- H. *Joint Check*. A check issued by the Contractor or one of its subcontractors to a DBE firm and a material supplier or other third party for materials or services to be incorporated into the work.
- I. *Reduction*. A reduction occurs when the Contractor reduces a commitment to a DBE. A reduction constitutes a partial termination.
- J. *Subcontractor*. An individual, firm, corporation or other legal entity to whom the Contractor sublets part of the Contract. For purposes of this special provision, the term subcontractor includes suppliers.
- K. *Substitution*. Substitution occurs when a Contractor seeks to find another DBE to perform work on the contract as a result of a reduction or termination.
- L. *Termination*. A termination occurs when a Contractor no longer intends to use a DBE for fulfillment of a commitment.
- M. *Total Earnings Amount*: Amount of the Contract earned by the Contractor, including approved changes and approved force account work performed, but not including any deductions for liquidated damages, price reduced material, work time violations, overweight loads or liens. The amount of the Contract earned does not include plan force account items (i.e. OJT, pavement incentives, etc).
- N. *Work Code*. A code to identify the work that a DBE is certified to perform. A work code includes a six digit North American Industry Classifications System code plus a descriptor. Work codes are listed on a firm's profile on the UCP DBE Directory. The Contractor may contact the CRBRC to receive guidance on whether a work code covers the work to be performed.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

4. Eligible Participation

The following rules will be used to determine whether work performed by a DBE qualifies as eligible participation on the Contract:

- A. *Work Must be Identified in Commitment.* The work performed by the DBE must be reasonably construed to be included in the work area and work code identified by the Contractor in the approved commitment.
- (1) If the Contractor intends to use a DBE for work that was not listed in the commitment, the Contractor shall submit Form 1420, DBE Participation Plan Modification for approval of the modification. Unapproved work will not count toward the contract goal.
 - (2) A DBE commitment cannot be modified to include work for which the DBE was not certified at the time of the approval of the original commitment.
- B. *DBE Must be Certified to Perform the Work.* The DBE must be certified to perform the work upon submission of the commitment and upon execution of the DBE's subcontract.
- (1) When a commitment has been made, but upon review of Form 205, Sublet Permit, CDOT determines that the DBE is no longer certified in the work code which covers the work to be performed, the Contractor may not use the DBE's participation toward the contract goal. The Contractor shall terminate the DBE commitment and seek substitute DBE participation in accordance with Section 9 below.
 - (2) A DBE's work will continue to count as eligible participation if the DBE was certified upon approval of Form 205, Sublet Permit and the certification status changes during the performance of the work.
 - (3) Suppliers must be certified upon execution of the purchase order.
- C. *DBE Performs the Work.* Eligible participation will only include work actually performed by the DBE with its own forces.
- (1) Work performed by the DBE includes the cost of supplies and materials obtained by the DBE for its work on the Contract, including any equipment leased by the DBE, provided that such supplies or equipment are not purchased or leased from the Contractor or a subcontractor that is subletting to the DBE.
 - (2) The term "work actually performed by the DBE with its own forces" includes work by temporary employees, provided such employees are under the control of the DBE.
 - (3) If CDOT or the LPA determines that a DBE has not performed a CUF on the project, no participation by such DBE shall count toward the contract goal.
- D. *DBE Subcontracts to Another Firm.* When a DBE subcontracts part of the work, the value of the subcontracted work may only be counted toward the goal if the subcontractor is a DBE. Performance by non-DBE subcontractors, including non-DBE trucking firms and owner-operators, shall be deducted from the DBE's participation.
- E. *DBE Received Payment for the Work.* Eligible participation only includes work for which the DBE has received payment, including the release of its retainage.
- F. *Special Calculations for Suppliers.* When a DBE supplies goods on a project, the DBE may be classified as a manufacturer, dealer or broker. The DBE's status as a manufacturer, dealer or broker is determined

4
 DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 REQUIREMENTS (LOCAL AGENCY)

on a contract-by-contract basis and is based upon the actual work performed.

- (1) When a DBE is deemed to be acting as a manufacturer, one hundred percent of the commitment will count as eligible participation.
- (2) When a DBE is deemed to be acting as a regular dealer (i.e. non-manufacturer supplier), only sixty percent of the commitment will count as eligible participation.
- (3) When a DBE is deemed to be acting as a broker, only the reasonable brokerage fee will count as eligible participation.

G. *Reasonable Fee for Contract-Specific Services.* Services shall count toward the contract goal only if they are specifically required for the performance of the Contract. Non-contract specific expenses may not be counted toward the contract goal. Fees for services must be reasonable. Services include but are not limited to professional services, public involvement, etc. In the case of temporary employment placement agencies, only the placement fee for an individual to be specifically and exclusively used for work on the contract shall count as eligible participation.

H. *Pre-Approval for Joint Venture Participation.* When a DBE is a participant in a joint venture, the DBE must apply to CDOT to determine how much of the work performed by the joint venture will count toward the contract goal. The DBE shall complete Form 893, Information for Determining DBE Participation when a Joint Venture Includes a DBE. Form 893 shall be submitted to CDOT CRBRC no less than ten days before the submission of the Proposal or to the RCRO no less than ten days before submission of the Form 205 to ensure sufficient time for review.

5. Proposal Requirements

In order to be eligible for award, the following shall be submitted with the proposal to the LPA:

- A. *Form 1413, Bidders List.* The bidder shall list each subcontractor (including both DBE and non-DBE subcontractors) that submitted a quote for participation on the project. Failure to submit a signed Form 1413 will result in rejection of the proposal.
- B. *Form 1414, Anticipated DBE Participation Plan.* If the Contract Goal is greater than zero, the bidder shall submit Form 1414 to document anticipated DBE participation.
 - (1) If the Bidder has not obtained any DBE commitments, it shall still submit Form 1414 documenting zero anticipated participation. If the Contract Goal is greater than zero, failure to submit a signed Form 1414 shall result in rejection of the proposal.
 - (2) The bidder shall list the DBE, work area(s), commitment amount and estimated eligible participation for each commitment. Once Form 1414 is submitted, a commitment may only be terminated or reduced in accordance with Section 9 below. The bidder is responsible for ensuring that commitments, and the estimated eligible participation resulting therefrom, have been properly calculated prior to submitting its proposal.
 - (3) If the bidder is a DBE, the bidder must include itself in Form 1414 and list the work area(s) and amount that it intends to self-perform and count as eligible participation on the contract.
 - (4) Commitments may be made to second tier or lower DBE subcontractors; however, the Contractor is ultimately responsible for the fulfillment of the commitment and shall sign the Form 1415, Commitment Confirmation.

6. Additional Forms Due Prior to Award.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

If the contract goal is greater than zero, or if the bidder has voluntarily made commitments, the Bidder shall submit the following forms to the LPA within five calendar days of selection as the lowest apparent bidder. These forms must be submitted to the CDOT CRBRC concurrent with the request for concurrence to award.

- A. *Form 1415, Commitment Confirmation.* A Form 1415, Commitment Confirmation shall be obtained from each DBE listed on Form 1414. The bidder shall complete Section 1 and the DBE shall complete Section 2 of Form 1415. Form 1415s shall be consistent with the commitments listed on Form 1414. The bidder shall not modify commitments listed on Form 1414 without good cause and approval from CDOT. The bidder shall contact CDOT if any issues arise which may require the bidder to alter or terminate a commitment.
- B. *Form 1416, Good Faith Effort Report.* If the total eligible participation listed on Form 1414 does not meet the contract goal, the lowest apparent bidder shall also submit Form 1416, Good Faith Effort Report and any supporting documentation that the bidder would like considered by CDOT as evidence of good faith efforts.

7. Commitment and Good Faith Effort Review

- A. *Commitment Review.* CDOT will evaluate the Form 1414 and each Form 1415 to ensure that if the commitment is valid and has been properly calculated. CDOT may investigate or request additional information in order to confirm the accuracy of a commitment. If CDOT determines that the total estimated eligible participation of the commitments does not meet the contract goal, within two business days of notice from CDOT, the bidder shall submit Form 1416 to CDOT.
- B. *Good Faith Effort Review.* If the total eligible participation of Form 1414 and all supporting Form 1415s does not meet the contract goal, CDOT will review Form 1416 and all supporting documentation submitted by the bidder in order to determine whether the bidder has demonstrated good faith efforts to obtain DBE participation. CDOT will use 49 CFR Part 26, Appendix A as a guide for determining whether the bidder made good faith efforts to meet the contract goal. A bidder will be deemed to not have made good faith efforts if the bidder lists a DBE for a work area for which the DBE is not certified and the bidder cannot establish a reasonable basis for its determination. CDOT may consider and approve commitments made after submission of the bid if the Bidder demonstrates that (1) good faith efforts were made prior to submission of the bid and (2) there is a reasonable justification for not obtaining the commitments prior to submission of the bid.
- C. *Administrative Reconsideration.* If CDOT determines that the bidder did not demonstrate good faith efforts to meet the contract goal, it will provide the bidder and LPA with written notice of its determination. The bidder will be provided an opportunity to request administrative reconsideration of the decision. The process for reconsideration is set forth in the *Good Faith Effort Appeal Process*, which is an Appendix I to the DBE Program Manual. A copy of the *Good Faith Effort Appeal Process* will be included in the written notice from CDOT.
- D. *Form 1417, Approved DBE Participation Plan.* If CDOT determines that the bidder has met the contract goal or made good faith efforts to do so, CDOT will issue to the bidder, with a copy to the LPA, Form 1417, Approved DBE Participation Plan, documenting the approved commitments. If CDOT determines that the bidder did not meet the contract goal but made good faith efforts to do so, via the Form 1417 CDOT will amend the contract goal in accordance with the commitments that were obtained and attach an explanation of its determination.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

8. Ongoing Oversight of DBE Participation

- A. *Consistency Review.* CDOT will review Form 205, Sublet Permit Application to determine whether the work being sublet is consistent with the DBE commitments. CDOT may withhold approval of the sublet or direct the LPA to stop performance of the work if the Contractor has reduced, terminated, or otherwise modified the type or amount of work to be performed by a DBE without seeking prior approval.
- B. *Form 1419, DBE Participation Report.* The Contractor shall submit Form 1419, DBE Participation Report to the LPA Engineer on a quarterly basis (January 15, April 15, July 15, and October 15) and upon completion of the Contract. The LPA may withhold progress payments if the quarterly Form 1419 is not received on time. The LPA will not provide final payment on the Contract until the final Form 1419 has been reviewed and approved by the CDOT RCRO.
- C. *Joint Checks.* All joint checks must be approved by the CDOT RCRO before they are used in payment to a DBE. Joint checks used in payments to DBEs will be monitored closely to ensure (1) the DBE is performing a CUF and (2) the joint checks are not being used in a discriminatory manner. The Contractor shall request approval for the use of a joint check in a written letter signed by the DBE and the Contractor, stating the reason for the joint checks and the approximate number of checks that will be needed.
- D. *Commercially Useful Function.* CDOT will monitor performance during the Contract to ensure each DBE is performing a CUF. If CDOT or the LPA determines that a DBE is not performing a CUF, no work performed by such DBE shall count as eligible participation. The DBE, Contractor, and any other involved third parties may also be subject to additional enforcement actions.
- (1) When determining whether a DBE is performing a CUF, CDOT and the LPA will consider the amount of work subcontracted, industry practices, the amount the firm is to be paid compared to the work performed and eligible participation claimed, and any other relevant factors.
 - (2) With respect to material and supplies used on the Contract, in order to perform a CUF the DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.
 - (3) With respect to trucking, in order to perform a CUF, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Contract. Additionally, the DBE trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the Contract.
 - (4) A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. CDOT will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.
 - (5) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, CDOT and the LPA will presume that the DBE is not performing a CUF. The DBE may present evidence to rebut this presumption.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

9. DBE Participation Plan Modifications

- A. *Contractor must Use DBEs Listed in Approved Plan.* The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which it is listed unless the Contractor obtains the CDOT RCRO's written consent to terminate, reduce or modify the commitment. Unless CDOT grants such consent, the Contractor will not be entitled to payment for the work or materials. Failure to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or other remedies established by CDOT or the LPA.
- B. *Form 1420, DBE Participation Plan Modification Request.* During the performance of the Contract, the Contractor shall use Form 1420, DBE Participation Plan Modification Request to communicate all requests for termination, reduction, substitution, and waivers to the CDOT RCRO. One Form 1420 may include multiple requests and must be submitted at the time of the occurrence or, if that is not possible, within a reasonable time of the occurrence requiring termination, reduction, substitution or waiver.
- C. *Commitment Terminations and Reductions.* No commitment shall be terminated or reduced without CDOT's approval. Terminations and reductions include, but are not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces, those of an affiliate, a non-DBE firm or with another DBE firm. In order to receive approval, the Contractor shall:
- (1) Have good cause for termination or reduction. Good cause may include:
 - (i) the DBE fails or refuses to execute a written contract;
 - (ii) the DBE fails or refuses to perform the work of its subcontract consistent with normal industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Contractor or one of its subcontractors;
 - (iii) the DBE fails to meet reasonable, nondiscriminatory bond requirements;
 - (iv) the DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (v) the DBE is ineligible to work because of suspension or debarment proceedings or other state law;
 - (vi) the DBE is not a responsible contractor;
 - (vii) the DBE voluntarily withdraws from the project and provides written notice to CDOT,
 - (viii) the DBE is ineligible to receive DBE credit for the work required;
 - (ix) the DBE owner dies or becomes disabled and is unable to complete the work;
 - (x) the DBE ceases business operations or otherwise dissolves;
 - (xi) or other documented good cause that compels termination. Good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.
 - (2) Provide the DBE notice of the Contractor's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the CDOT RCRO and LPA;

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

- (3) In the notice of intent, provide the DBE at least five calendar days to respond to the notice and inform CDOT and the Contractor of the reasons, if any, why it objects to the proposed termination or reduction and any reasons that it shall not be approved. The Contractor is not required to provide the five calendar days written notice in cases where the DBE in question has provided written notice that it is withdrawing from the subcontract or purchase order. The notice period may be reduced by the CDOT RCRO if required by public necessity.
- (4) Following the notice period, if the Contractor decides to proceed, submit Form 1420 requesting approval of the termination or reduction.
- (5) When a commitment is terminated or reduced (including when a DBE withdraws), make good faith efforts to find another DBE to substitute. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the participation that was terminated or reduced up to the contract goal.

D. *Contract Changes.* In the event of a contract change:

- (1) If the LPA eliminates or reduces work committed to a DBE, such change shall be considered good cause for termination or reduction in accordance with Section 9.B above. The Contractor shall follow the processes outlined in Section 9.B.
- (2) If the LPA issues a change which increases or adds new work items, the Contractor shall ensure that it has obtained sufficient DBE participation to meet the Contract Goal, or has made good faith efforts to do so.

E. *Process for Substitution or Increase in Participation to Meet the Contract Goal.* When the Contractor must obtain additional DBE participation to meet the Contract Goal, whether resulting from an approved termination or reduction or a change to the Contract, the Contractor shall:

- (1) Increase the participation of a DBE for any work items previously identified in an approved commitment without seeking CDOT approval; provided, however, that at its discretion, the CDOT RCRO may request a Form 1420 documenting such additional participation; or
- (2) If the Contractor needs to add new work to a commitment or obtain additional participation from a DBE that is not already participating on the contract pursuant to an approved commitment, submit a Form 1420 and Form 1415 to the RCRO requesting approval of the additional participation; or
- (3) If the Contractor determines that additional DBE participation cannot be obtained, submit a Form 1420 to the RCRO requesting waiver of the participation. The Contractor shall include its justification for not obtaining additional participation and, at its discretion, CDOT may require additional information regarding the efforts of the Contractor. If the Contractor has not obtained substitute participation, the RCRO may require the Contractor to submit evidence of good faith efforts to substitute. The contractor shall have seven days to submit such information. This period may be extended at the discretion of the RCRO.

9
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIREMENTS (LOCAL AGENCY)

10. Payment Reduction

The Contractor's retainage will not be released until the CDOT RCRO has determined whether the Contractor will be subject to a payment reduction. Payment reductions will be calculated as follows:

- A. *Failure to Fulfill Commitments.* If the Contractor terminated or reduced a commitment, the Contractor will be subject to a payment reduction for any termination or reduction which was not approved via a Form 1420.
- B. *Failure to Meet Contract Goal.* If the Contractor failed to meet the contract goal, the Contractor will be subject to a payment reduction for the portion of the contract goal that was not met and was not waived via an approved Form 1420.
- C. *Duplication.* The contractor will not be subject to duplicate reduction for the same offense.
- D. *Adjustments.* CDOT may adjust the payment reduction wherein the Contractor demonstrates that its failure to obtain DBE participation was due to circumstances outside of its control.

11. Other Enforcement

- A. *Investigations.* As it determines necessary, CDOT or the LPA may conduct reviews or investigations of participants. All participants, including, but not limited to, DBE firms and applicants for DBE certification, complainants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.
- B. *Intimidation and retaliation.* Participants shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the DBE program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE program.
- C. *Consequences of Non-Compliance.* Failure to comply with subsections 11 A. or 11 B. shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).
- D. *Fraud and Misrepresentation.* If CDOT or the LPA determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by CDOT or the LPA to be unallowable, or if the Contractor engages in repeated violations, falsification or misrepresentation, CDOT may:
 - (1) refuse to count any fraudulent or misrepresented DBE participation;
 - (2) withhold progress payments to the Contractor commensurate with the violation;
 - (3) suspend or reduce the Contractor's prequalification status;
 - (4) refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; or
 - (5) seek any other available contractual remedy.

Decision Nos. CO180023 dated January 05, 2018 supersedes Decision Nos. CO170023 dated January 06, 2017.		Modifications			ID
		MOD Number	Date	Page Number(s)	
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		1	02/09/18 (Non-Wages & Benefits change)	-	-
		2	03/02/18	1	2
		3	07/13/18	1	3
General Decision No. CO180023 applies to the following counties: Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, and Summit counties.					
General Decision No. CO180023 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
1598	CARPENTER (Excludes Form Work)	25.50	9.47	3	
	TRAFFIC SIGNALIZATION:				
	SUMMIT COUNTY				
	Traffic Signal Installation				
1599	Zone 1	26.42	4.75% + 8.68		
1600	Zone 2	29.42	4.75% + 8.68		
	<u>Traffic Installer Zone Definitions</u> Zone 1 – Within a 35 mile radius measured from the addresses of the following cities: Colorado Springs - Nevada & Bijou Denver - Ellsworth Avenue & Broadway Ft. Collins - Prospect & College Grand Junction - 12th & North Avenue Pueblo - I-25 & Highway 50 Zone 2 - All work outside these areas.				
1824	ELECTRICIAN (Boom Truck Operator)	21.71	8.66		
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1601	Smaller than Watson 2500 and similar	27.60	10.10		
1602	Watson 2500 similar or larger	27.92	10.10		
	IRONWORKER:				
	Structural				
1603	Garfield	27.45	27.76	2	

General Decision No. CO180023				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
	CARPENTER (Form Work Only):			
1604	Eagle, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	15.92	5.38	
1605	Garfield	19.55	4.09	
	CEMENT MASON/CONCRETE FINISHER:			
1606	Eagle	17.59	2.85	
1607	Garfield	17.27	2.16	
1608	Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt	18.23	2.85	
1609	Summit	15.55	2.85	
	ELECTRICIAN:			
1610	Excludes Traffic Signalization	28.06	8.76	
	Traffic Signalization Electrician			
1611	Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	28.24	8.52	
	Traffic Signalization Groundsman			
1612	Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt	15.93	4.01	
1613	Summit	16.75	4.10	
	GUARDRAIL INSTALLER:			
1614	Eagle	12.78	3.46	
1615	Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	12.78	3.31	
	HIGHWAY/PARKING LOT STRIPING:			
1616	Truck Driver (Line Striping Truck)	14.60	3.49	
	Painter			
1617	Eagle,	13.85	3.07	
1618	Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	13.97	3.07	
	IRONWORKER:			
	Excludes Guardrail Installation			
1619	Reinforcing	16.94	6.77	
1620	Structural	22.22	6.01	

General Decision No. CO180023				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORER:			
	Asphalt Raker			
1621	Eagle	16.36	3.26	
1622	Garfield	18.66	3.53	
1623	Grand	17.90	3.02	
1624	Jackson, Lake, Moffatt, Routt	17.75	3.75	
1625	Pitkin	17.50	3.75	
1626	Rio Blanco	18.97	3.75	
1627	Summit	16.77	3.26	
	Common or General			
1628	Eagle, Garfield, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	12.44	3.53	
1629	Grand	19.14	3.53	
1630	Concrete Saw (Hand Held)	16.00	6.14	
	Landscape and Irrigation			
1631	Eagle	14.84	3.16	
1632	Garfield, Grand, Jackson, Lake, Moffatt, Rio Blanco, Routt	13.54	3.16	
1633	Pitkin	14.16	3.16	
1634	Summit	13.09	3.16	
	Mason Tender - Cement/Concrete			
1635	Eagle, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	12.44	3.10	
1636	Garfield	14.87	3.10	
	Traffic Control			
1637	Flagger	9.42	3.21	
	Sets Up/Moves Barrels, Cones, Installs signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)			
1638	Eagle, Garfield, Grand, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	12.39	3.20	
1639	Jackson	12.93	3.22	

General Decision No. CO180023				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	PAINTER: (Spray Only)			
1640	Eagle	17.49	3.52	
1641	Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt	17.54	3.52	
1642	Summit	19.96	3.52	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1643	Eagle, Summit	22.67	8.72	
1644	Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Routt	24.09	7.93	
1645	Rio Blanco	23.67	9.22	
1646	Asphalt Paver	22.67	8.72	
1647	Asphalt Plant	19.27	4.47	
	Asphalt Roller			
1648	Eagle	23.01	8.72	
1649	Garfield, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	23.15	8.07	
1650	Grand	22.67	8.72	
1651	Asphalt Spreader	25.61	6.96	
	Backhoe/Trackhoe			
1652	Eagle	22.56	7.02	
1653	Garfield	19.40	4.42	
1654	Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt	22.92	6.15	
1655	Summit	24.30	5.75	
	Bobcat/Skid Loader			
1656	Eagle	18.25	4.32	
1657	Garfield	24.63	0.00	
1658	Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt	21.04	5.18	
1659	Summit	19.77	4.28	

General Decision No. CO180023				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Broom/Sweeper			
1660	Eagle	23.35	7.78	
1661	Garfield, Jackson, Lake, Moffat, Pitkin, Routt	21.92	7.66	
1662	Grand	21.67	8.22	
1663	Rio Blanco	21.66	0.00	
1664	Summit	22.67	8.72	
1665	Bulldozer	26.78	7.05	
1666	Chipper	22.04	8.26	
1667	Crane	23.82	9.22	
1668	Drill	20.84	2.66	
1669	Forklift	18.30	5.01	
1670	Grade Checker	23.82	9.22	
1671	Grader/Blade	23.05	6.45	
1672	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1673	Eagle	24.98	7.55	
1674	Garfield	21.93	9.22	
1675	Grand, Pitkin,	22.67	8.72	
1676	Jackson, Lake, Moffat, Routt	24.07	7.92	
1677	Rio Blanco	23.67	9.22	
1678	Summit	25.88	7.01	
	Mechanic			
1679	Eagle, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	23.31	3.93	
1680	Garfield	19.80	4.20	
	Oiler			
1681	Eagle	23.82	7.62	
1682	Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	24.04	7.77	

General Decision No. CO180023				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Roller/Compactor (Dirt and Grade Compaction)			
1683	Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Routt	22.72	5.98	
1684	Rio Blanco	23.67	9.22	
1685	Summit	24.38	6.11	
	Rotomill			
1686	Eagle	18.86	4.41	
1687	Garfield, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt	20.70	4.41	
1688	Grand	23.48	4.41	
1689	Summit	16.28	4.41	
1690	Scraper	20.60	7.99	
	Screed			
1691	Eagle	17.04	3.98	
1692	Garfield, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	23.76	5.05	
1693	Grand	23.29	4.05	
1694	Tractor	15.08	2.95	

General Decision No. CO180023				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER:			
	Distributor			
1695	Eagle, Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Routt, Summit	19.07	4.35	
1696	Rio Blanco	15.80	5.27	
	Dump Truck			
1697	Eagle	16.17	3.83	
1698	Garfield	16.29	3.83	
1699	Grand, Jackson, Lake, Moffat, Routt	17.79	4.02	
1700	Pitkin	20.13	4.15	
1701	Rio Blanco	17.26	4.63	
1702	Summit	15.27	5.27	
	Lowboy Truck			
1703	Eagle	18.89	4.56	
1704	Garfield, Grand, Jackson, Lake, Moffat, Pitkin, Rio Blanco, Routt, Summit	18.43	4.56	
1705	Mechanic	17.79	3.51	
1706	Multi-Purpose Specialty & Hoisting Truck	14.60	3.49	
1707	Pickup and Pilot Car	14.04	3.49	
1708	Semi-Truck	20.72	0.00	
	Water Truck			
1709	Eagle	23.05	2.90	
1710	Garfield	21.00	5.88	
1711	Grand	21.19	3.01	
1712	Jackson, Lake, Moffatt, Pitkin, Routt, Summit	20.39	3.43	
1713	Rio Blanco	17.25	3.75	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION NO. CO180023

1
ON THE JOB TRAINING

This training special provision is an implementation of 23 U.S.C. 140 (a). The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees.

As part of the Contractor's Equal Employment Opportunity Affirmative Action Program, training shall be provided on projects as follows:

1. The Contractor shall provide on the job training aimed at developing full journey workers in the skilled craft identified in the approved training plan. The Contractor shall provide at a minimum, required training hours listed in the Project Special Provisions for each project.
2. The primary objective of this specification is to train and upgrade women and minority candidates to full journey worker status. The Contractor shall make every reasonable effort to enroll and train minority and women workers. This training commitment shall not be used to discriminate against any applicant for training whether or not the applicant is a woman or minority.
3. The Contractor may employ temporary workers from CDOT supportive services providers to meet OJT requirements. Information pertaining to supportive services providers may be obtained by calling the CDOT OJT Coordinator at the number shown on the link <http://www.coloradodot.info/business/equal-opportunity/training.html>
4. An employee shall not be employed or utilized as a trainee in a skilled craft in which the employee has achieved journey status.
5. The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor and approved by the Department and the Colorado Division of the Federal Highway Administration (FHWA), or the U. S Department of Labor (DOL), Office of Apprenticeship or recognized state apprenticeship agency. To obtain assistance or program approval contact:

CDOT Center for Equal Opportunity
4201 East Arkansas Avenue
Denver, CO 80222
eo@dot.state.co.us
1-800-925-3427
6. The Contractor shall pay the training program wage rates and the correct fringe benefits to each approved trainee employed on the project and enrolled in an approved program. The minimum trainee wage shall be no less than the wage for the Guardrail Laborer classification as indicated in the wage decision for the project.
7. The CDOT Regional Civil Rights Manager must approve all proposed apprentices and trainees for the participation to be counted toward the project goal and reimbursement. Approval must occur before training begins. Approval for the apprentice or trainee to begin work on a CDOT project will be based on:
 - A. Evidence of the registration of the trainee or apprentice into the approved training program.
 - B. The completed Form 838 for each trainee or apprentice as submitted to the Engineer.
8. Before training begins, the Contractor shall provide each trainee with a copy of the approved training program, pay scale, pension and retirement benefits, health and disability benefits, promotional opportunities, and company policies and complaint procedures.
9. Before training begins, the Contractor shall submit a copy of the approved training program and CDOT Form 1337 to the Engineer. Progress payments may be withheld until this is submitted and approved and may be withheld if the approved program is not followed.

2
ON THE JOB TRAINING

10. On a monthly basis, the Contractor shall provide to the Engineer a completed On the Job Training Progress Report (Form 832) for each approved trainee or apprentice on the project. The Form 832 will be reviewed and approved by the Engineer before reimbursement will be made. The Contractor will be reimbursed for no more than the OJT Force Account budget. At the discretion of the Engineer and if funds are available, the Engineer may increase the force account budget and the number of reimbursable training hours through a Change Order. The request to increase the force account must be approved by the Engineer prior to the training.
11. Upon completion of training, transfer to another project, termination of the trainee or notification of final acceptance of the project, the Contractor shall submit to the Engineer a "final" completed Form 832 for each approved apprentice or trainee.
12. All forms are available from the CDOT Center for Equal Opportunity, through the CDOT Regional Civil Rights Manager, or on CDOT's website at <http://www.coloradodot.info/business/bidding/Bidding%20Forms/Bid%20Winner%20Forms>
13. Forms 838 and 832 shall be completed in full by the Contractor. Reimbursement for training is based on the number of hours of on the job training documented on the Form 832 and approved by the Engineer. The Contractor shall explain discrepancies between the hours documented on Form 832 and the corresponding certified payrolls.
14. The OJT goal (# of training hours required) for the project will be included in the Project Special Provisions and will be determined by the Regional Civil Rights Manager after considering:
 - A. Availability of minorities, women, and disadvantaged for training;
 - B. The potential for effective training;
 - C. Duration of the Contract;
 - D. Dollar value of the Contract;
 - E. Total normal work force that the average bidder could be expected to use;
 - F. Geographic location;
 - G. Type of work; and
 - H. The need for additional journey workers in the area
 - I. The general guidelines for minimum total training hours are as follows:

Contract dollar value	Minimum total training hours to be provided on the project
Up to 1 million	0
>1 - 2 million	320
>2 - 4 million	640
>4 - 6 million	1280
>6 - 8 million	1600
>8 - 12 million	1920
>12 - 16 million	2240
>16 - 20 million	2560
For each increment of \$5 million, over \$20 million	1280

ON THE JOB TRAINING

15. The number of training hours for the trainees to be employed on the project shall be as shown in the Contract. The trainees or apprentices employed under the Contract shall be registered with the Department using Form 838, and must be approved by the Regional Civil Rights Manager before training begins for the participation to be counted toward the OJT project goal. The goal will be met by an approved trainee or apprentice working on that project; or, if a Contractor's apprentice is enrolled in a DOL approved apprenticeship program and registered with CDOT using Form 838 and working for the Contractor on a non-CDOT project. The hours worked on the non-CDOT project may be counted toward the project goal with approved documentation on Form 832. Training hours will be counted toward one project goal.
16. Subcontractor trainees who are enrolled in an approved Program may be used by the Contractor to satisfy the requirements of this specification.
17. The Contractor will be reimbursed \$2.00 per hour worked for each apprentice or trainee working on a CDOT project and whose participation toward the OJT project goal has been approved.
18. The Contractor shall have fulfilled its responsibilities under this specification if the CDOT Regional Civil Rights Manager has determined that it has provided acceptable number of training hours.
19. Failure to provide the required training will result in the following disincentives: A sum representing the number of training hours specified in the Contract, minus the number of training hours worked as certified on Form 832, multiplied by the journey worker hourly wages plus fringe benefits $[(A \text{ hours} - B \text{ hours worked}) \times (C \text{ dollar per hour} + D \text{ fringe benefits})] = \text{Disincentives Assessed}$. Wage rate will be determined by averaging the wages for the crafts listed on Form 1337. The Engineer will provide the Contractor with a written notice at Final Acceptance of the project informing the Contractor of the noncompliance with this specification which will include a calculation of the disincentives to be assessed.

July 3, 2017

1
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

Contract and are to be included in all subcontracts with the following modification:

For TAP (Transportation Alternatives Program) funded Recreational Trails projects, Section I (4) regarding convict labor and all of Section IV of the FHWA 1273 do not apply.

Except for Local Agency projects, the Contractor and all subcontractors who are subject to Davis-Bacon Related Acts (DBRA) requirements, shall submit all payrolls and Contractor Fringe Benefit Statements electronically via LCPtracker, utilizing the following web link:

<https://prod.lcptracker.net/WebForms/login.aspx>

The Contractor and subcontractors shall submit a Contractor Fringe Benefit Statement, either for each individual, or for groups of people, for all employees who perform work on the project and whose wages are covered by the Davis-Bacon Related Acts. Other approved deductions shall be noted within the LCPtracker system, and supporting documentation shall be attached. If for any reason the fringe benefits are altered during the life of the project, the Contractor, subcontractor, or both shall submit a revised Contractor Fringe Benefit Statement to accurately reflect the changes.

Each construction subcontractor shall submit their payrolls directly into LCP Tracker for approval by the Contractor.

The Contractor shall submit and approve their own payrolls in LCPtracker.

The Engineer will approve or reject weekly payrolls for the Contractor.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

FHWA-1273 -- Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

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

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

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

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

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

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

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

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

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

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm>

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or

the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to

journeymen shall not be greater than permitted by the terms of the particular program.

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

places where it is readily available to all persons concerned with the project:

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering

into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

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

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

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

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

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

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

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

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

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

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

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

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

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

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

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

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the

use of mineral resource materials native to the Appalachian region.

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

SECOND AND BELFORD CONNECTOR PATHWAY
TOWN OF FRISCO, COLORADO
◆
PROJECT SPECIAL PROVISIONS

Name	Date	No. of Pages
Revision of Section 104 – Scope of Work (Traffic Control)	(April. 3, 2017)	1
Revision of Section 203 – Excavation and Embankment	(April. 3, 2017)	1
Revision of Section 608 – Sidewalks and Bikeways	(April. 3, 2017)	1
Revision of Section 630 – Construction Zone Traffic Control	(April. 3, 2017)	1
Disadvantaged Business Enterprise (DBE) Contract Goal	(April. 3, 2017)	1
On the Job Training Contract Goal	(April. 3, 2017)	1
Utilities	(July. 3, 2018)	1

**REVISION OF SECTION 104
SCOPE OF WORK**

Section 104 of the Standard Specifications is hereby revised for this project as follows:

In subsection 104.04 include the following section 104.04 (e):

Areas of construction will need to be protected by fencing, cones, barricades, etc. Standard construction signs will be needed to direct traffic and pedestrian movements away or around construction zones. Temporary paths may be needed for pedestrian and bike users and property owners using their driveways. All signs, cones, barricades, detour signage, flaggers, grading of temporary paths and driveways use shall be included in the lump sum for traffic control.

Closing of the construction area prior to earthwork should be set forth, so there are no dangers to the traveling public and pedestrian traffic.

Flaggers to be used as necessary and shall be considered part of the scope.

Detours should be put in place for pedestrians and bike path users on 2nd Avenue and direct them to the path on 5th Avenue at Granite and Pitkin Streets as a safe means of travel. The Town of Frisco can provide specialty signs necessary for pedestrian detours. For Belford Street, pedestrian traffic and bike path users will have to be detoured to certain locations based on their methods of travel and their desired location. That will have to be discussed with the Contractor at the precon meeting. The project areas of 2nd Avenue and Belford Street shall remain closed to pedestrian traffic throughout the duration of the project. Once one project area is to full completion, it shall be opened to the traveling public and pedestrian traffic.

Night closures will require all flashers, lights, etc. per MUTCD recommendations and any additional safety lighting as required.

Vehicular traffic will be kept to one lane on both 2nd Avenue and Belford Street. 2nd Avenue will only be using the southbound lane as means of travel. Northbound traffic will be detoured to 5th Avenue at Frisco Street, and back to 2nd Avenue on Granite Street. Belford Street will be closing down the eastbound lane. Traffic coming out the Peak One Neighborhood must be rerouted to 2nd Avenue where they will then be directed to use 5th Avenue at Pitkin Street. It would be advantageous to the Town and to the property owners who are impacted by the project, that intersections be closed one at a time so means of travel are not completely cut-off throughout the duration of the project. Again, this will be discussed with the Contract to find the best solution. For any and all closures and openings, the Town and Summit County Dispatch must be notified prior to any actions taken by the Contractor.

During the construction where the 8th Avenue and Belford Street intersection is impacted, an alternative must be agreed upon by the Contractor and the Town, so the travel impacts are left to a minimum.

During weekends, or longer periods of work stoppage, the pedestrian detours shall remain in place, while ones used for vehicular traffic must be opened (as the conditions of the project permit) as traffic flows rise on the weekends.

All temporary ramps and pathways made for the project shall comply with ADA specifications.

April 3, 2018

REVISION OF SECTION 203
EXCAVATION AND EMBANKMENT

Section 203 of the Standard Specifications is hereby revised for this project as follows:

In subsection 203.03 include the following paragraph:

Embankment shall include the grading work of blading and dozing for cut and fill to the line and grade as directed by the plans. Where fill material import is required, the Town of Frisco will procure and haul to the project site for incorporation to the project by the contractor. Where excess cut material is produced from the grading work. The Town of Frisco will haul off the excess material. Material shall be loaded on the haul off trucks by the contractor. When directed by the Town of Frisco the contractor shall haul off the excess material under the contract item 203-00000.

The earthwork volumes for the project is estimated at 426 CY of cut and 65 CY of fill.

In subsection 203.14 pay item "Embankment Material (Complete in Place)" shall be replaced by the following:

Embankment Material (Complete in Place) Lump Sum (LS)

April 3, 2018

**REVISION OF SECTION 608
Sidewalks and Bikeways**

Section 608 of the Standard Specifications is hereby revised for this project as follows:

In subsection 608.03 include the following paragraph:

Detectable warnings shall comply with standard plan M-608-1. Where plates are to be installed on a curb radius "radius plates" shall be used to match the radius per plan which may require a combination of premanufactured radii (example, combination of 30' radius and 25' radius, to closely approximate a 28' radius). Plate shall be installed per manufactures recommendations.

To be consistent with the Town of Frisco pedestrian facilities plates shall be manufactured by one of the following:

- DURALAST® Detectable Warning Plates
- Neenah Foundry Detectable Warning Plates
- TufTile® Cast Iron ADA Tactile Tiles

In subsection 608.6 include the following Pay item:

Detectable Warnings Square Foot (SF)

April 3, 2018

REVISION OF SECTION 630
CONSTRUCTION ZONE TRAFFIC CONTROL

Section 630 of the Standard Specifications is hereby revised for this project as follows:

In subsection 630.18 add the following pay item:

Traffic Control Lump Sum (LS)

April 3, 2018

Disadvantaged Business Enterprise (DBE) Contract Goal

This is a federally-assisted construction project. As described in the CDOT DBE Standard Special Provision, the Bidder shall make good faith efforts to meet the following contract goal:

3.0% Percent DBE participation.

April 3, 2018

On the Job Training Contract Goal

The Owner of this project has determined that On the Job Training shall be provided to trainees with the goal of developing full journey workers in the types of trade or classification involved. The contract goal for On the Job Trainees working in an approved training plan in this Contract has been established as follows:

Minimum number of total On the Job Training hours required has been set to zero (0) hours.

UTILITIES

The following utilities are within the limits of this project but are not expected to be involved.

Utility		
Entity	Contact Name	Contact Phone
Comcast	Dave Stepisnik	303.684.3329
Xcel Energy (low pressure gas, electric)	Amy Lagace	970.262.4077
Centrylink	Ron Hickman	970.668.9151

The work described in these plans and specifications requires coordination between the Contractor and the utility companies in accordance with subsection 105.11 in conducting their respective operations as necessary to complete the utility work with minimum delay to the project.

The work listed below shall be performed by the Contractor in accordance with the plans and specifications, and as directed by the Engineer. The Contractor shall keep each utility company advised of any work being done to its facility, so that the utility company can coordinate its inspections for final acceptance of the work with the Engineer.

FOR:

Utility			
Entity	Contact Name	Contact Phone	Work description
Frisco Sanitation District	Matt Smith	970.668.3723	Adjust manhole covers
Town of Frisco (water)	Jeff Goble	970.668.9151	Adjust valve covers

The work listed below will be performed by the utility owners or their agents:

None anticipated.

GENERAL:

The Contractor shall comply with Article 1.5 of Title 9, CRS ("Excavation Requirements") when excavation or grading is planned in the area of underground utility facilities. The Contractor shall notify all affected utilities at least two (2) business days, not including the day of notification, prior to commencing such operations. The Contractor shall contact the Utility Notification Center of Colorado (UNCC) at (8-1-1) or 1-800-922-1987 to have locations of UNCC registered lines marked by member companies. All other underground facilities shall be located by contacting the respective company. Utility service laterals shall also be located prior to beginning excavating or grading.

The location of utility facilities as shown on the plan and profile sheets, and herein described, were obtained from the best available information.

All costs incidental to the foregoing requirements will not be paid for separately but shall be included in the work.