

**GUNNISON CITY COUNCIL AGENDA**  
**MEETING IS HELD AT CITY HALL**  
**201 WEST VIRGINIA AVENUE, GUNNISON, COLORADO**  
**2nd FLOOR COUNCIL CHAMBERS**  
**REMOTE ACCESS MEETING**  
Approximate meeting time: 3.5 hours

**TUESDAY**  
**MAY 23, 2023**

**REGULAR SESSION &**  
**WORK SESSION**

**5:30. P.M.**

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*The public may attend this City Council meeting in-person or by phone or computer via Zoom. To register to access this meeting remotely, click [Gunnison City Council Regular Session](https://us02web.zoom.us/webinar/register/WN_y-KrRIEbQRO5ETsvyIAYqw) or go to: [https://us02web.zoom.us/webinar/register/WN\\_y-KrRIEbQRO5ETsvyIAYqw](https://us02web.zoom.us/webinar/register/WN_y-KrRIEbQRO5ETsvyIAYqw)*

**I. Presiding Officer Calls Regular Session to Order: (silent roll call by City Clerk)**

**II. Public Input: (estimated time 3 minutes)**

*At this agenda time, non-agenda scheduled members of the public may present issues of City concern to Council on topics that are not to be considered later in the meeting. Per Colorado Open Meetings Law, no Council discussion or action will take place until a later date, unless an emergency situation is deemed to exist by the City Attorney. Each speaker has a time limit of 3 minutes to facilitate efficiency in the conduct of the meeting and to allow an equal opportunity for everyone wishing to speak.*

**III. Public Hearing**

Please see the packet for the public hearing format. The City of Gunnison asks concerned citizens to submit their comments in writing for the scheduled Public Hearing by 4:00 pm on May 23, 2023, to the City Clerk or attend the public hearing virtually or in person. Written comments will be read into the record during the hearing. Public Hearings are the formal opportunity for the City Council to listen to the public regarding the issue at hand. Citizens giving input must identify themselves. Anonymous testimony will not be considered.

**Public Hearing on Zoning Map Amendment application ZA 23-3**

Background: The purpose of the public hearing is to receive public input on the merits of Zoning Map Amendment application ZA 23-3 submitted by the City of Gunnison to rezone a property from Industrial to R3 - Multifamily Residential.

**IV. Council Action Items**

**A. Approval of the May 9, 2023, Regular Session Meeting Minutes**

Background: Per City Charter, the City Clerk produces minutes of the Council actions for all regular and special session meetings. Minutes are approved or amended at the following regular session meetings and become permanent city record. If a city councilor was not present at the meeting, they must abstain in the vote and action on approval of

the minutes.

Staff contact: City Clerk Erica Boucher

**Action Requested of Council:** A motion to approve the May 9, 2023, Regular Session meeting minutes.

Estimated Time: 2 minutes

**B. Resolution No. 9, Series 2023:** *A Resolution of the City Council of the City of Gunnison, Colorado, Commending Greg Larson for his Contributions to the City of Gunnison Planning and Zoning Commission*

Background: Greg Larson has served on the Planning and Zoning Commission from July 2009 through May 2023 and has generously donated time, knowledge and thoughtful considerations to the Commission.

Staff contact: Community Development Director Anton Sinkewich

**Action Requested of Council:** Introduce, read in full, motion to pass and adopt Resolution No. 9, Series 2023.

Estimated time: 5 minutes

**C. Ordinance No. 5, Series 2023, Second Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Repealing Ordinance No. 7, Series 1992*

Background: The ordinance repeals Ordinance No. 7, Series 1992, which provides direction for the disposal of unclaimed property, and which is no long applicable.

Staff contact: Police Chief Keith Robinson

**Action Requested of Council:** Introduce, read by title only and motion to pass and adopt Ordinance No. 5, Series 2023, on second reading.

Estimated time: 5 minutes

**D. Ordinance No. 6, Series 2023, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Changing the Zoning District Classification of Parcel 2, Sawtooth-Phase 1 Boundary Line Adjustment from Industrial to R3 (Multifamily) and Amending the Official Zoning Map of the City of Gunnison, Colorado*

Background: A zoning amendment has been initiated by the Community Development Director to rezone Parcel 2 of the Fred R. Field Western Heritage Center from Industrial to R3 Multifamily Residential. The site has historically been used for a carnival annually in July. Workforce/Attainable housing is desired on the site that is considered compatible with the surrounding neighborhood.

Staff contact: Community Development Director Anton Sinkewich

**Actions requested of Council:** 1) To discuss and consider zoning amendment ZA-3; and 2) Introduce, read by title only and motion to approve and order to publish Ordinance No. 6, Series 2023, on first reading.

Estimated time: 10 minutes

- E. Ordinance No. 7, Series 2023, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Approving a Lease Purchase Financing to Provide Funds to Finance Utility Cost-Savings Measures and Facility Improvement Measures and, in Connection Therewith, Authorizing and Approving a Site Lease, a Lease Purchase Agreement and Other Documentation Relating to the Financing; and Providing Other Details in Connection with the Financing*

Background: The City of Gunnison has executed a Memorandum of Understanding with the Colorado Energy Office (CEO)'s Energy Performance Contracting (EPC) Program. C.R.S. 29-12.5-101 allows the City of Gunnison to leverage utility cost saving to repay annual financing costs associated with certain types of facility upgrades. This financing mechanism uses the guaranteed utility savings and avoided future capital expenses to finance the acquisition/construction of capital improvements that increase energy efficiency at the City of Gunnison.

Staff contact: City Manager/Finance Director Ben Cowan

**Actions Requested of Council:** 1) A motion to accept the Investment Grade Audit Report presented By McKinstry; and 2) Introduce, read by title only and motion to approve and order to publish Ordinance No. 7, Series 2023, on first reading.

Estimated Time: 25 minutes

- F. Ordinance No. 8, Series 2023, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Amending the Work in the Right-Of-Way Permit Provisions Contained in Section 9.10.010, and Making Corresponding Amendments to Sections 12.10.030 of the Gunnison Municipal Code*

Background: Currently the City of Gunnison charges fees for the issuance of a work in the right-of-way permit. While the City of Gunnison Fee Resolution sets the permit fee, this ordinance will establish the authority of City of Gunnison to collect the fee. These fees will cover staff time to review and approve the permits and time needed for inspection to ensure the return of the surface to its pre-work condition.

Staff contact: GIS Technician Lisa Starkebaum

**Action requested of Council:** Introduce, read by title only and motion to approve and order to publish Ordinance No. 8, Series 2023, on first reading.

Estimated Time: 15 minutes

- G. Resolution No. 10, Series 2023:** *A Resolution of the City Council of the City of Gunnison, Colorado, Rescheduling the June 27, 2023, Regular Session Meeting to June 20, 2023*

Background: Per the City Charter, the Council shall provide by resolution for the time and place of its regular meetings and shall hold at least one regular meeting each month.

Staff Contact: City Clerk Erica Boucher

**Action Requested of Council:** Introduce, read by title only and motion to pass and adopt Resolution No. 10, Series 2023.

Estimated time: 5 minutes

**H. Funds to Study a Non-Dam Feature Impacting the Floodplain Map**

Background: The City of Gunnison is currently involved in a complete flood mapping revision process that is being led by the Colorado Water Conservation Board in partnerships with WSP engineering, local governments, stakeholders and FEMA in an effort to produce a new set of flood insurance rate maps (FIRM's) for the entire Gunnison County by 2026.

Staff contact: Community Development Director Anton Sinkewich, City Engineering Cody Tusing and Building Official Eric Jansen

**Actions Requested of Council:** 1) A motion to approve funding not to exceed \$49,500 for the evaluation of the Non-Dam structure from Council's Strategic Implementation Fund; 2) To authorize the City Manager to execute an agreement with Wright Water Engineers, Inc.

Estimated time: 15 minutes

**I. City Stormwater Master Plan**

Background: Stormwater impacts everyone in the City in existing and future developments. As the City grows impacts from Stormwater can create hazards impacting resident's safety and property. The master plan and subsequent Stormwater management manual will provide roadmaps for the City to implement Stormwater management in the City and in growing areas.

Staff contact: City Engineer Cody Tusing

**Action Requested of Council:** A motion to authorize the City Manager to execute a contract for professional engineering services with HDR Engineering, Inc. for \$149,667 as budgeted.

Estimated time: 20 minutes

**J. Timeline of Dates Related to the Coordinated Election, November 7, 2023**

Background: At the May 9, 2023, Regular Session meeting, Councilor Miles stated his intention to resign from City Council prior to the end of his term in December 2025.

The Gunnison Municipal Charter outlines how Council handles Council resignations.

Staff contact: City Clerk Erica Boucher

**Action Requested of Council:** No action requested.

Estimated time 15 minutes

**V. Staff and Council Reports**

Background: Council and staff will provide updates and introduce discussion items for future meetings.

City Attorney Report

City Clerk Schedule Update

City Manager Update

Western Liaison Update



City Councilors with City-related meeting reports; discussion items for future Council meetings

**VI. Regular Session Meeting Adjournment.**

**VII. Work Session on Streets Funding: Direction for Strategy**

Background: On April 24, 2023, a public input session was held to gather feedback on alternative approaches to address the street maintenance funding shortage and the 2032 sunset of 75% of the special Parks and Recreation tax. Discussion of strategies to address these problems will be a topic of a work session during most upcoming council meetings.

Staff contact: City Manager and Finance Director Ben Cowan

**Action Requested of Council:** No Council action requested.

Estimated Time: 30 minutes

**VIII. Work Session Meeting Adjournment.**

The City Council Meetings agenda is subject to change. The City Manager and City Attorney reports may include administrative items not listed. Regular Meetings and Special Meetings are recorded and action can be taken. Minutes are posted at City Hall and on the City website at [www.gunnisonco.gov](http://www.gunnisonco.gov). Work sessions are recorded; however, minutes are not produced. For further information, contact the City Clerk's office at 970.641.8140. **TO REQUEST INTERPRETATION SERVICES OR TO COMPLY WITH ADA REGULATIONS, PEOPLE WITH SPECIAL NEEDS ARE REQUESTED TO CONTACT THE CITY CLERK 24 HOURS BEFORE ALL MEETINGS AT 970.641.8140.**

**PUBLIC HEARING FORMAT**  
**FOR ZONING MAP AMENDMENT APPLICATION, ZA 23-3, PROPOSING REZONE**  
**A PROPERTY FROM INDUSTRIAL TO R3-MULTIFAMILY RESIDENTIAL**  
**5:30 P.M., Tuesday, MAY 23, 2023**

- I. Mayor Opens Public Hearing: State the time, date, location, and name those in attendance.
- II. State Reason for Public Hearing  
The purpose of the public hearing is to receive public input on the merits of Zoning Map Amendment application ZA 23-3 submitted by the City of Gunnison to rezone a property from Industrial to R3 - Multifamily Residential.
- III. Proof of Publication - City Clerk
- IV. City Staff Comments/Recommendation  
Community Development Director Anton Sinkewich
- V. Public Comment  
Ask anyone wishing to comment to please step up to the microphone, state their name, and sign the sign-in sheet for the record. Ask anyone participating remotely to make a comment. They should state their full name.
- VI. Enter letters, emails or other comments received from the public into the record.
- VII. Call for any final comments – hearing none, Mayor Close the Public Hearing.

CITY OF GUNNISON

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

PLEASE TAKE NOTE THAT, pursuant to Sections 6.5 and 10.3 of the *Land Development Code* of the City of Gunnison, Colorado, a public hearing will be held at the hour of 5:30 p.m. on the 23<sup>rd</sup> day of May, 2023 in the City Council Chambers, Gunnison Municipal Building, 201 West Virginia Avenue, Gunnison, Colorado on the merits of Zoning Map Amendment application ZA 23-3 submitted by the City of Gunnison to rezone a property from Industrial to R3 - Multifamily Residential. The property is legally described as:

A portion of Parcel 2, Replat of Fred R. Field Western Heritage Center, Reception Number 567008, City of Gunnison, Gunnison County, State of Colorado.

AT WHICH TIME AND PLACE you may attend and give testimony, if you so desire.

The public may attend Public Hearings and Regular and Special Sessions in person or remotely.

To attend the meeting remotely go to:

[https://us02web.zoom.us/webinar/register/WN\\_y-KrRIEbQRO5ETsvyIAYqw#/registration](https://us02web.zoom.us/webinar/register/WN_y-KrRIEbQRO5ETsvyIAYqw#/registration)

City of Gunnison, Colorado

City Council

/s/ Erica Boucher, City Clerk



# Gunnison Country TIMES

WINNER!  
BEST IN  
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2021 Colorado Press  
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The news  
you need.

The excellence  
you deserve.

Best Classified Pages or Sections

Best Print Ad

Best Use of Digital Advertising

Best News Media/ House Ad Promotion

Best Advertising Special Section - 1st

Best Advertising Special Section - 2nd

Best News Media/ House Ad Promotion

Best News Story

Best Environmental Story - 1st

Best Environmental Story - 2nd

Best Education Story

Best Editorial Writing

Best Business News/ Feature Story

Best Sports or Sports Event Story

Best Agriculture Story

Best Sports Column Writing

Best Newsletter

Excellence in Audio Digital Storytelling - 1st

Excellence in Audio Digital Storytelling - 2nd

Best Photography Portfolio - 1st

Best Photography Portfolio - 2nd

Best Feature Photograph

Best Page Design

Best Photo Slideshow, Gallery or Photo Essay

Best Sports Photograph

Best Informational Graphic

Best Sports Photograph

Best Cover Design



SUBSCRIBE  
OR DONATE  
TODAY!

Mrs. Roberts  
Health Insurance Committee- Mr.  
Taylor

XI. Forthcoming Agendas/  
Meeting Dates and Times

Monday, May 22, 2023 Regular meeting/  
Proposed Budget@5:30 CBCS Library  
Monday, June 5, 2023 Regular meeting/  
Budget Hearing Gunnison/Lake School  
Monday, June 26, 2023 Regular  
meeting/Budget Adoption Gunnison/Lake  
School

GECAGWSD Negotiations schedule  
Thursday, May 11th 8:00am -  
4:00pm Public by ZOOM only

XII. Executive Session  
C.R.S. 24-6-402 (4)(f) that the Board enter  
executive session to discuss a personnel  
matter. The particular matter that is to  
be discussed behind closed doors is the  
superintendent evaluation.

XIII. Adjournment

Gunnison Country Times  
Gunnison, Colorado.  
Publication date of May 4, 2023

8893

## LAND USE CHANGE PERMIT APPROVALS

NOTICE OF LAND USE CHANGE PERMIT  
APPROVALS CREATING A VESTED  
RIGHT  
GUNNISON COUNTY, COLORADO

PLEASE TAKE NOTICE that Gunnison  
County has approved the following Land  
Use Change permits with site-specific  
development plans(s) within unincorporated  
Gunnison County, which creates a three-  
year vested property right pursuant to  
Colorado Revised Statutes, Article 68 of Title  
24 C.R.S., as amended.

A "vested property right" gives the following  
applicant(s) the right to undertake the  
development subject to the condition(s) of  
approval of the site-specific development  
plan(s).

LUC-22-00065- Moon Ridge Subdivision  
approved to amend covenants.

/s/ Beth Baker  
Community Development Services Manager  
Gunnison County Community Development  
Department

Gunnison Country Times  
Gunnison, Colorado.  
Publication date of May 4, 2023

8810

## NOTICE TO CREDITORS

NOTICE TO CREDITORS

Estate of Christopher M. Schodorf,  
Deceased  
Case Number 2023PR030012

All persons having claims against the above-  
named estate are required to present them  
to the personal representative or to District  
Court of Ouray, County, Colorado on or  
before September 4, 2023, or said claims  
may be forever barred.  
Brian Muth, PR

c/o James E. Plumhoff III  
Devor & Plumhoff LLC  
PO Box 3310  
Montrose, CO 81402  
Tel: 970-249-7000

Gunnison Country Times  
Gunnison, Colorado.  
Publication dates of May 4, 11, and 18, 2023

8802

## NOTICE TO CREDITORS

NOTICE TO CREDITORS

Marilyn J. Katheiser, Deceased

Case Number 2023PR30013

All persons having claims against the above-  
named estate are required to present them  
to the Personal Representative or to the  
District Court of Gunnison County, Colorado  
on or before September 4, 2023, or the  
claims may be forever barred.

James Greg Katheiser  
Personal Representative  
c/o Kathleen L. Fogo, P.C.  
Attorney for Personal Representative  
P.O. Box 7200, Gunnison, CO 81230

Gunnison Country Times  
Gunnison, Colorado.  
Publication dates of April 20, 27 and May 4,  
2023

8676

## PUBLIC HEARING

CITY OF GUNNISON  
NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

PLEASE TAKE NOTE THAT, pursuant  
to Sections 6.5 and 10.3 of the Land  
Development Code of the City of Gunnison,  
Colorado, a public hearing will be held at  
the hour of 7:30 p.m. on the 24th day of  
May, 2023 in the City Council Chambers,  
Gunnison Municipal Building, 201 West  
Virginia Avenue, Gunnison, Colorado on  
the merits of Zoning Map Amendment  
application ZA 23-5 submitted by David  
Gross to rezone a property from Commercial  
to RMU - Mixed Use Multifamily Residential.  
The property is legally described as:  
Resultant Lot 3, Lot Line Adjustment, Lot 3  
and 4, Meldrum Subdivision, Reception No.  
652504, City of Gunnison, Gunnison County,  
State of Colorado.

AT WHICH TIME AND PLACE you may  
attend and give testimony, if you so desire.  
The public may attend Public Hearings and  
Regular and Special Sessions in person or  
remotely. To attend the meeting remotely go  
to: [https://us02web.zoom.us/j/82158877391](https://us02web.zoom.us/j/82158877391?pwd=Si8xeXhVtNpBtSVG92VlRkGSmplkZz09)  
?pwd=Si8xeXhVtNpBtSVG92VlRkGSmplkZz09

City of Gunnison, Colorado  
Planning and Zoning Commission

/s/ Andie Ruggera, Senior Planner

Gunnison Country Times  
Gunnison, Colorado.  
Publication date of May 4, 2023

8892

## PUBLIC HEARING

CITY OF GUNNISON  
NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

PLEASE TAKE NOTE THAT, pursuant  
to Sections 6.7 and 7.2 of the Land  
Development Code of the City of Gunnison,  
Colorado, a public hearing will be held  
at the hour of 7:00 PM on the 24th day of  
May, 2023, in the City Council Chambers,  
Gunnison Municipal Building, 201 West  
Virginia Avenue, Gunnison, Colorado on  
the merits of Conditional Use Application  
CU 23-1 submitted by Silvia Veronica Perez  
Hernandez, for a temporary commercial  
activity of food truck in the Commercial (C)  
zone district.

The real property for which the conditional  
use is sought is legally described as follows:  
Part of lots 8 - 12, Block 14, West Gunnison  
Amended, City and County of Gunnison,  
State of Colorado. More commonly known  
as 618 West Tomichi Avenue, Gunnison,  
Colorado.

AT WHICH TIME AND PLACE you may  
attend and give testimony, if you so desire.

CITY OF GUNNISON PLANNING AND  
ZONING COMMISSION

The public may attend Public Hearings and  
Regular and Special Sessions in person or  
remotely. To attend the meeting go to:  
[https://us02web.zoom.us/j/82158877391](https://us02web.zoom.us/j/82158877391?pwd=Si8xeXhVtNpBtSVG92VlRkGSmplkZz09)  
?pwd=Si8xeXhVtNpBtSVG92VlRkGSmplkZz09  
/s/Caree Musick, Planning Technician

Gunnison Country Times  
Gunnison, Colorado.  
Publication date of May 4, 2023

8777

## PUBLIC HEARING

CITY OF GUNNISON

NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

PLEASE TAKE NOTE THAT, pursuant  
to Sections 6.5 and 10.3 of the Land  
Development Code of the City of Gunnison,  
Colorado, a public hearing will be held at  
the hour of 5:30 p.m. on the 23rd day of  
May, 2023 in the City Council Chambers,  
Gunnison Municipal Building, 201 West  
Virginia Avenue, Gunnison, Colorado on  
the merits of Zoning Map Amendment  
application ZA 23-3 submitted by the City  
of Gunnison to rezone a property from  
Industrial to R3 - Multifamily Residential. The  
property is legally described as:

A portion of Parcel 2, Replat of Fred R. Field  
Western Heritage Center, Reception Number  
567008, City of Gunnison, Gunnison County,  
State of Colorado.

AT WHICH TIME AND PLACE you may  
attend and give testimony, if you so desire.

The public may attend Public Hearings and  
Regular and Special Sessions in person or  
remotely. To attend the meeting remotely go  
to:  
[https://us02web.zoom.us/webinar/register/](https://us02web.zoom.us/webinar/register/WN_y-KrIEbQRO5ETsylvIAyqW#registration)  
WN\_y-KrIEbQRO5ETsylvIAyqW#  
registration

City of Gunnison, Colorado  
City Council

/s/ Erica Boucher, City Clerk

Gunnison Country Times  
Gunnison, Colorado.  
Publication date of May 4, 2023

8833

## SUMMONS

DISTRICT COURT, GUNNISON COUNTY,  
COLORADO

Court Address:  
200 E. Virginia Avenue  
Gunnison, CO 81230  
(970) 642-8300

Plaintiff:  
LAND JACK LLC, a New Mexico limited  
liability company

v.

Defendants:  
JAMES N. CLARK; CHRISTINE M. CLARK;  
MIRIAM BETULA LEPORE; NICOLE C.  
CLARK; RACHEL GRACE LAPORE A/K/A  
RACHEL G. LAPORE A/K/A APRIL GRACE  
ASTA A/K/A APRIL G. ASTA A/K/A APRIL G.  
ASTA-HORNER; WILLIAM G. HORLBECK,  
P.C.; ABRIL MEADOWS HOMEOWNER'S  
ASSOCIATION; THE BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY  
OF GUNNISON; and ALL UNKNOWN  
PERSONS WHO CLAIM UNDER OR  
THROUGH THE NAMED DEFENDANTS  
AND ALL UNKNOWN PERSONS WHO  
CLAIM ANY INTEREST IN THE SUBJECT  
MATTER OF THIS ACTION

Attorneys for Plaintiffs:  
Zachary A. Grey, Atty. Reg. 49269  
Frascona, Joiner, Goodman and Greenstein  
P.C.  
4750 Table Mesa Drive  
Boulder, CO 80305  
Telephone: 303-494-3000  
Facsimile: 303-494-6309  
Email: [zac@frascona.com](mailto:zac@frascona.com)

case number: 2023CV030011

TO THE ABOVE-NAMED DEFENDANT(S):  
You are hereby summoned and required to  
appear and defend against the claims of the  
complaint filed with the court in this action,  
by filing with the clerk of this court an answer  
or other response. You are required to file  
your answer or other response within 21 or  
35 days after the service of this summons  
upon you. Service of this summons shall be  
complete on the day of the last publication. A  
copy of the complaint may be obtained from  
the clerk of the court.

If you fail to file your answer or other  
response to the complaint in writing within  
21 or 35 days after the date of the last  
publication, judgment by default may be  
rendered against you by the court for the  
relief demanded in the complaint without  
further notice.

Dated: April 27, 2023  
Frascona, Joiner, Goodman and  
Greenstein, P.C.

/s/Zachary A. Grey  
Attorney for Plaintiff

Gunnison Country Times  
Gunnison, Colorado.  
Publication dates of April 27 and May 4, 11,  
18, 25, 2023

8718

Have an idea?  
Let us know!



We're  
always  
looking  
for stories  
that  
impact the  
lives of the  
Valley's  
residents.  
Send  
us your  
photos  
or story  
ideas.

Email  
[editor@gunnisonontimes.com](mailto:editor@gunnisonontimes.com)  
970-641-1414

ALANWARTESMEDIA





TO: City Council  
FROM: Andie Ruggera, Senior Planner  
DATE: May 23, 2023  
RE: ZA 23-3, Zoning Amendment

**Purpose:**

A Map Amendment has been initiated by Community Development staff to rezone a property zoned Industrial to R3 Multi-Family Residential. The property is located on Parcel 2, Sawtooth Phase 1 Boundary Line Adjustment, City and County of Gunnison.

**Background:**

The site has historically been used for the carnival in association with Cattlemen's Days in July annually. During the remainder of the year, the parcel remains vacant of use. Gunnison County owns this parcel as well as land to the north and has discussed housing projects on these sites over the last two years.

County property directly north of this site within the R2 (Duplex Residential) zone district is currently under construction for 18 deed restricted units. The County would like to construct up to 30 deed restricted workforce and affordable multi-family units on the subject parcel.

**Council's Strategic Criteria:**

This Text Amendment Application addresses/relates to the following criteria:

1. *Public Safety and Community Resiliency.*

The rezoning allows for the availability of attainable housing in our community and is a central component of our community's ongoing resiliency. Traffic impacts on this site from development, whether development is Industrial or Residential will be evaluated at the site development review process and mitigation may be required to ensure safety of multimodal transportation.

2. *Public Engagement which fosters racial and cultural equity, inclusivity, and diversity.*

Public notice has been placed in the paper, at the site and to adjacent property owners in compliance with public notice requirements of the *Land Development Code* to encourage engagement. Providing the availability of attainable housing in our community is central to fostering racial and cultural equity, inclusivity, and diversity, and is a central component of our community's ongoing resiliency.

3. *Achieving the City's Environmental Sustainability Goals.*

Facilitating attainable housing in the City of Gunnison will result in efficient use of the city's infrastructure and services, resulting in increased multimodal transportation use and reductions in Vehicle Miles Traveled (VMT) to help achieve the City's environmental sustainability goals.

4. *Actively scan and communicate/solicit feedback from with who are potentially affected by a policy change.*

Public notice was provided in accordance with public hearing notice requirements within the *Land Development Code*.

**Recommendation/Attachments:**

The Planning and Zoning Commission held a public hearing on April 26, 2023 regarding this request and by majority voted to recommend approval of Zoning Amendment Application, ZA 23-3 to City Council.

The Council packet contains the staff report with the proposed amendment, the Planning and Zoning Commission's recommendation, the application, comments received at the Commission meeting and the draft Ordinance.

**Action requested by Council:**

- 1). Review and discuss the proposed zoning amendment, and
- 2). Introduce, read by title only and motion to pass and order to publish Ordinance No. 6, Series 2023 on first reading.

**STAFF REPORT**  
**ZONING AMENDMENT**  
Parcel 2, Fred R. Field Western Heritage Center

TO: Planning and Zoning Commission  
FROM: Andie Ruggera, Senior Planner  
DATE: April 26, 2023  
RE: Zoning Amendment Application ZA 23-3

### **CODE PROVISIONS**

The *Land Development Code (LDC)*, Section 10.2 (Initiation) specifies that an amendment to the official zoning map may be initiated by City Council, the Planning and Zoning Commission, the Community Development Director or the owner of, or holder of, a recognized interest in that real property whose zoning is proposed to be amended.

A zoning amendment shall be reviewed by the City of Gunnison Planning and Zoning Commission (Commission) at a public hearing after 15 days public notice. The Commission establishes a recommendation to City Council, to approve, approve with conditions, deny or remand the application back to the applicant with instructions for modification. City Council shall consider the recommendation of the Commission at a public hearing and shall, by ordinance, approve, deny or remand the application back to the applicant with instructions for modification or additional information.

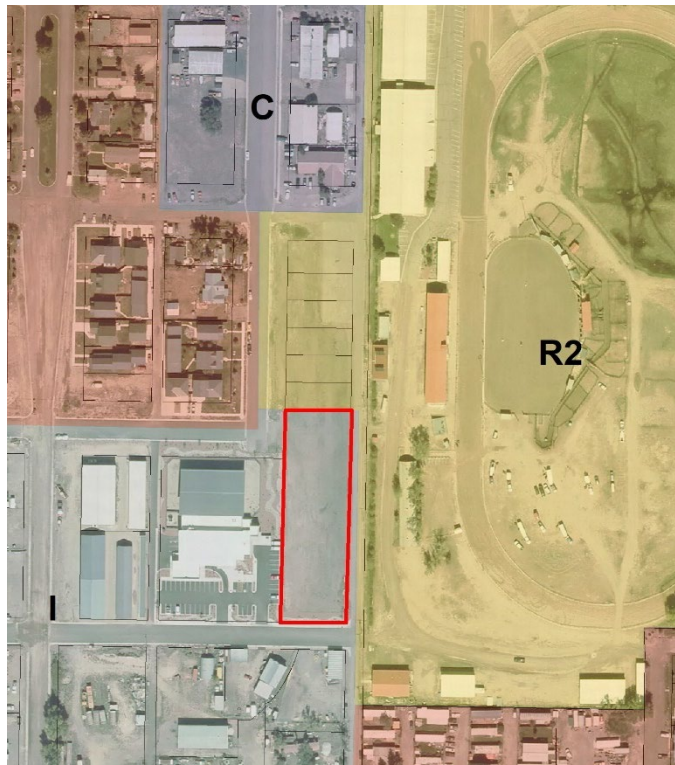
### **APPLICATION**

The applicant is the Community Development Director and the request is to rezone a property zoned Industrial to R3 (Multi-family Residential). The legal description of the property is Parcel 2, Replat of the Fred R. Field Western Heritage Center, Sawtooth – Phase 1, Boundary Line Adjustment, City and County of Gunnison, Colorado.

### **SITE ASSESSMENT**

The site has historically been used for the carnival in association with Cattlemen's Days in July annually. During the remainder of the year, the parcel remains vacant of use. The County of Gunnison owns this parcel as well as land to the north and discussed housing projects on these sites over the last two years.

The property is surrounded by the fairgrounds (Fred R. Field Western Heritage Center) to the east, residential and industrial uses to the south, the Sheriff's Office/Detention Center and single family residential to the west and the Phase 1 Sawtooth residential project is directly to the north with light industrial further north.





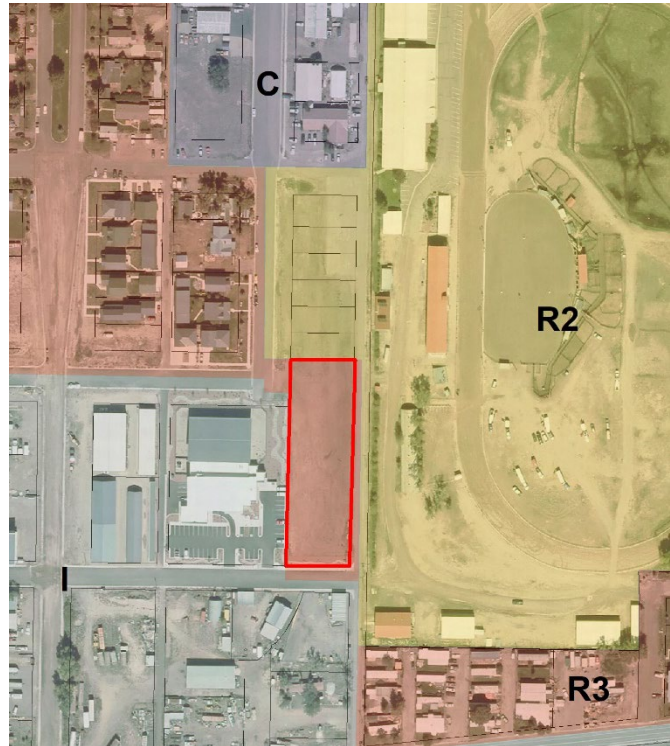
STAFF REPORT  
ZONING AMENDMENT  
Parcel 2, Fred R. Field Western Heritage Center

### PROPOSED ZONING

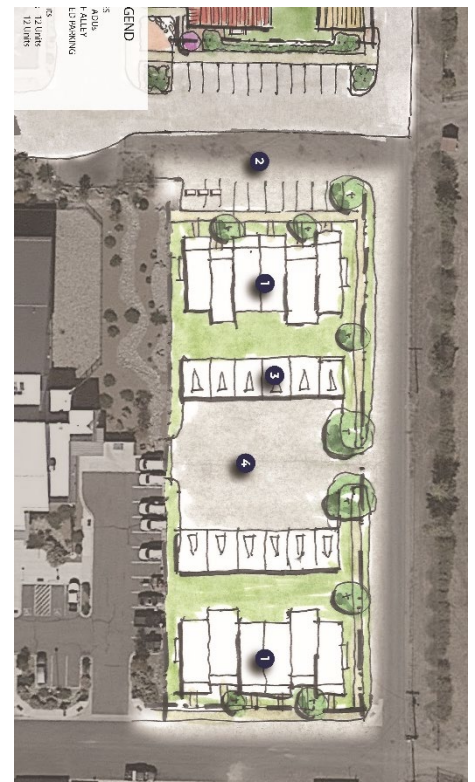
The site is proposed for R3 (Multi-family Residential) from the existing Industrial zone district. The R3 zone district allows for all housing types and a density of up to 80 units / acre (30-40 units are proposed).

The site is accessed by Evans Avenue and Bidwell Avenue from the west and the north/south alley on the east. As development occurs traffic impacts and controls may need to be addressed.

Water and Sewer surround the site and are adequate to provide services to residential units. Stormwater for the future development would be directed to the west side of the development then south into an existing drainage system in the vacated portion of 14<sup>th</sup> Street.



Conceptual designs have been prepared for this site; however, the final design has not been completed or reviewed. If the zoning amendment is approved any future residential development on this site would go through a site development review process.





STAFF REPORT  
ZONING AMENDMENT  
Parcel 2, Fred R. Field Western Heritage Center

DEPARTMENTAL COMMENTS:

Building Official: No issue.

Fire Marshal: No issue.

Parks and Recreation Department: No issue.

Police Department: No issue.

Public Works Director: No issue.

City Engineer: As development occurs on this site, traffic impact and controls may need to be analyzed for the north/south alley and surrounding streets.

Water and Sewer Superintendent: No issue.

Electric Superintendent: No issue.

STAFF OBSERVATIONS

1. The request is to rezone Parcel 2 from Industrial to R3 Multi-family Residential which requires an amendment to the official zoning map based on the City's *Land Development Code*.
2. The rezoning of this site is compatible with the surrounding neighborhood and residential uses to the west, the new residential construction to the north and residential to the southeast.
3. The rezoning allows for the construction of affordable/work force housing.
4. Adjacent utilities are adequate to accommodate the residential zoning.
5. Any development on this site will require a site development review process.

REVIEW STANDARDS

LDC Section 10.6 states that: An application for an Amendment to the Official Zoning Map shall comply with the following standards:

- A. Consistent with *Comprehensive Plan*. The proposed amendment shall be consistent with the *City of Gunnison Comprehensive Plan*.

**No Conflict.**

Chapter 6: Housing and Residential Areas – Increase the land use opportunities for multi-family, mixed-use, and accessory dwelling units.

Encourage residential development that increases housing diversity, and appeals to the full spectrum of Gunnison residents, from the work force population to seniors. Include options for rental, higher-density, and affordable homeownership.

Ensure desired residential uses are allowed and encouraged in the appropriate locations, per the future land use map.

Support continued public/private partnerships that make below market housing development feasible.

STAFF REPORT  
ZONING AMENDMENT  
Parcel 2, Fred R. Field Western Heritage Center

Promote residential infill and investment in existing neighborhoods in coordination with outward residential expansion.

B. Consistent with Purpose of Zone District. The proposed amendment shall be consistent with the purpose of the zone district to which the property is to be designated.

**No Conflict:** The purpose of the R3 Multi-family Residential zone district is to provide high density multi-family residential areas and mobile home parks. The proposal for this site is for up to 30-40 multi-family residential units.

C. Compatibility with Surrounding Zone Districts and Uses. The development permitted by the proposed Amendment shall be compatible with surrounding zone districts, land uses, and neighborhood character.

**No Conflict:** The rezoning and residential use is compatible with the surrounding zone districts and land uses. Surrounding residential includes a mix of single family, duplex and multi-family residential. Higher density residential uses are compatible with surrounding facilities and light industrial uses.

D. Changed Conditions or Error. The applicant shall demonstrate that conditions affecting the subject parcel or the surrounding neighborhood have changed, or that due to incorrect assumptions or conclusions about the property, one or more errors in the boundaries shown on the Official Zoning Map have occurred.

**No Conflict:** The surrounding neighborhood character has changed and there has been an increase in residential construction. The property directly to the north is currently under construction to provide 18 residential units.

## RECOMMENDATION

During the regular Planning and Zoning Commission meeting held on April 26, 2023, Commissioner Tocke moved, and Commissioner Perusek seconded, and the Commission voted to recommend APPROVAL by majority vote to City Council, Zoning Amendment application ZA 23-3, submitted by the Community Development Director to rezone Parcel 2, of the Sawtooth – Phase 1, Boundary Line Adjustment to R3 (Multi-family Residential), based on the following findings of fact:

### FINDINGS OF FACT:

1. The Planning and Zoning Commission finds that the record of this action includes the application contents on file with the City of Gunnison; all comments entered into the Public Hearing record; and provisions of the *City of Gunnison Land Development Code* and the *City of Gunnison Comprehensive Plan*.
2. The Planning and Zoning Commission finds that this Zoning Amendment application is to rezone Parcel 2, of the Sawtooth – Phase 1, Boundary Line Adjustment from Industrial to the R3 zone district.

STAFF REPORT  
ZONING AMENDMENT  
Parcel 2, Fred R. Field Western Heritage Center

3. The Planning and Zoning Commission finds that rezoning of the Industrial parcel to R3 residential is compatible with the surrounding neighborhood and residential uses under construction.
4. The Planning and Zoning Commission finds that rezoning of Parcel 2 from Industrial to R3 complies with the review standards for a zoning amendment.
5. The Planning and Zoning Commission finds that the zoning map amendment will not be a detriment to the community's health, safety and welfare.

**Land Use Development Application**  
*City of Gunnison Land Development Code*  
Minimum Application Contents  
In accordance with §6.5 C.

**City of Gunnison**  
P.O. Box 239  
Gunnison, CO 81230  
(970)641-8090

**Applicant Name(s):** \_\_\_\_\_

**Phone #:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Legal Description**

Site Address of Property: \_\_\_\_\_ Zoning \_\_\_\_\_

Block: \_\_\_\_\_ Lot(s): \_\_\_\_\_ Addition: \_\_\_\_\_

**Disclosure of Ownership- Please provide one of the following:**

- |   |                                   |   |   |
|---|-----------------------------------|---|---|
| <input type="checkbox"/> Assessor Parcel Info | <input type="checkbox"/> Mortgage | <input type="checkbox"/> Deed               | <input type="checkbox"/> Judgments        |
| <input type="checkbox"/> Liens                | <input type="checkbox"/> Contract | <input type="checkbox"/> Easement Agreement | <input type="checkbox"/> Other Agreements |

**Summary of Request:**

- Attachments:**      ☐ Vicinity Map (8.5"X11")      ☐ Description of Proposal
- ☐ Names, Addresses and Map of Adjoining Property Owners (From Assessor's Office)
- ☐ Vested Property Rights      ☐ Authorization of Agent (Power of Attorney from Owner, if not the applicant)
- ☐ Site Plan (11"x17") **to scale**, includes dimensions and location of all structures, parking spaces and access, snow storage, landscaping, live cover, utility lines, road/street names, land uses of adjacent properties, setbacks. Include a table for all dimensional requirements based on §2.6. (See attached sample)

SUBMIT ONE PAPER COPY OF YOUR APPLICATION PLUS A DIGITAL COPY

**Signature(s)**

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

**For Office Use Only**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Conditional Use     | <input type="checkbox"/> Variance          | <input type="checkbox"/> Zoning Amendment   |
| <input type="checkbox"/> Major Subdivision   | <input type="checkbox"/> Minor Subdivision | <input type="checkbox"/> Subdivision Exemption                                      |
| <input type="checkbox"/> Mobile Home/RV Park | <input type="checkbox"/> PUD               | <input type="checkbox"/> Vacation <input type="checkbox"/> Consolidated Application |



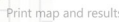
**MATTHEW BIRNIE**, COUNTY MANAGER  
Phone: (970) 641-0248 • Fax: (970) 641-3061  
Email: [mbirnie@gunnisoncounty.org](mailto:mbirnie@gunnisoncounty.org)  
Website: [www.GunnisonCounty.org](http://www.GunnisonCounty.org)

April 11, 2023

Gunnison County hereby consents to the City of Gunnison proposing a zoning map amendment on its parcel legally described as "Parcel 2, Fred R. Field Western Heritage Center—Gunnison County Fairgrounds, according to the Replat thereof." Gunnison County consents to rezoning of the parcel that is currently zoned as industrial to R-3.

  
Matthew Birnie, County Manager

4-11-23  
Date



Actual Value **\$10,470**

Actual Value **\$7,480,300**

Actual Value **\$361,740**

Actual Value **\$330,640**

Actual Value **\$518,610**

Net Cash Flow **\$51,720**

Actual Value **\$195,910**

Actual Value **\$359,590**

Actual Value **\$489,310**

Actual Value **\$453,500**

Actual Value **\$263,400**

Actual Value **\$201,650**

<b>613 S 14TH ST , GUNNISON</b> Account # R002312 Parcel # 378702143002 Owners DAVID JACK PROPERTIES LLC Legal LOTS 1-13 & 19-26, BLOCK 4, RIO GRANDE ADDITION TO GUNNISON	Actual Value <b>\$994,570</b>
<b>415 S 14TH ST UNIT# 1, GUNNISON</b> Account # R043650 Parcel # 378702166001 Owners PAGANO CATHERINE A, CREAM DANIEL D Legal UNIT 1, SAN LUIS TOWNHOMES, GUNNISON	Actual Value <b>\$332,520</b>
<b>415 S 14TH ST UNIT# 2, GUNNISON</b> Account # R043651 Parcel # 378702166002 Owners HOLBROOK CHRISTINE P Legal UNIT 2, SAN LUIS TOWNHOMES, GUNNISON	Actual Value <b>\$374,270</b>
<b>415 S 14TH ST UNIT# 3, GUNNISON</b> Account # R043652 Parcel # 378702166003 Owners BURT MATTHEW W, BURT MARY E Legal UNIT 3, SAN LUIS TOWNHOMES, GUNNISON	Actual Value <b>\$391,470</b>
<b>415 S 14TH ST UNIT# 5, GUNNISON</b> Account # R043654 Parcel # 378702166005 Owners HOLBROOK CHRISTINE P Legal UNIT 5, SAN LUIS TOWNHOMES, GUNNISON	Actual Value <b>\$323,270</b>
<b>424 S BOULEVARD ST , GUNNISON</b> Account # R043655 Parcel # 378702135006 Owners BRUNO REBECCA MARIE Legal LOTS 7 & 8, BLOCK 41, WEST GUNNISON	Actual Value <b>\$469,000</b>
<b>420 S BOULEVARD ST UNIT# 1, GUNNISON</b> Account # R044438 Parcel # 378702172001 Owners SOUTHWELL GEORGE W Legal UNIT 1, BALDY CINCO TOWNHOMES, GUNNISON	Actual Value <b>\$335,610</b>
<b>420 S BOULEVARD ST UNIT# 2, GUNNISON</b> Account # R044439 Parcel # 378702172002 Owners KOON WESLEY ALLEN Legal UNIT 2, BALDY CINCO TOWNHOMES, GUNNISON	Actual Value <b>\$384,750</b>
<b>420 S BOULEVARD ST , GUNNISON</b> Account # R044443 Parcel # 378702172006 Owners BALDY CINCO TOWNHOMES ASSOCIATION Legal 0.2681 ACRES COMMON ELEMENTS: BALDY CINCO TOWNHOMES, GUNNISON	Actual Value <b>\$0</b>
<b>428 S BOULEVARD ST UNIT# B, GUNNISON</b> Account # R045442 Parcel # 378702173001 Owners DONOHUE KERRY Legal UNIT B, EL DIENTE TOWNHOMES, GUNNISON	Actual Value <b>\$336,080</b>
<b>428 S BOULEVARD ST , GUNNISON</b> Account # R045443 Parcel # 378702173003 Owners EL DIENTE TOWNHOMES ASSOCIATION Legal 0.143 ACRES GENERAL & LIMITED COMMON ELEMENTS: EL DIENTE TOWNHOMES, GUNNISON	Actual Value <b>\$0</b>
<b>432 S BOULEVARD ST , GUNNISON</b> Account # R045444 Parcel # 378702135007 Owners HANACEK ROBERT, HANACEK THERESA Legal LOTS 11 & 12, BLOCK 41, WEST GUNNISON	Actual Value <b>\$575,800</b>
<b>415 S 14TH ST UNIT# 4, GUNNISON</b> Account # R070635 Parcel # 378702166008 Owners WRIGHT DANIEL G, WRIGHT MOLLY J Legal UNIT 4, SAN LUIS TOWNHOMES, GUNNISON	Actual Value <b>\$353,260</b>
<b>415 S 14TH ST UNIT# 5, GUNNISON</b> Account # R070636 Parcel # 378702166009 Owners SAN LUIS TOWNHOMES ASSOCIATION INC Legal 0.287 ACRES COMMON ELEMENTS: SAN LUIS TOWNHOMES, GUNNISON	Actual Value <b>\$0</b>
<b>510 14TH ST , GUNNISON</b> Account # R070924 Parcel # 378702171003 Owners BOARD OF COUNTY COMMISSIONERS Legal PARCELS 1A & 1B, FAIRGROUNDS SUBDIVISION	Actual Value <b>\$496,290</b>

Data last updated: 03/27/2023













LEGEND

- 1 TOWNHOMES
- 2 1 BEDROOM ADUS
- 3 PARKING OFF ALLEY
- 4 ALLEY LOADED PARKING

TOTAL UNITS: 24 Units

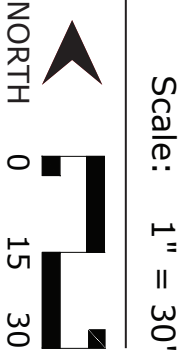
Townhomes: 12 Units  
ADUs: 12 Units

TOTAL PARKING: 24 off street spaces  
10 on-street spaces



SITE PLAN - OPTION 3

SAWTOOTH PHASE 2 GUNNISON, CO



Scale: 1" = 30'



April 26, 2023

City of Gunnison  
Planning and Zoning Commission  
201 W. Virginia, Gunnison, CO 81230

Re: Parcel 2, Replat of Fred R. Field Western Heritage Center

Dear Members,

We oppose the rezoning from industrial to R3 on Parcel 2, as part of the Sawtooth project.

As homeowners who live across from this project, on the corner of south 14<sup>th</sup> street and Evans, we feel this proposal would negatively impact traffic. Our neighborhood serves as a direct path to the Fairgrounds and Public Safety Center, which can be problematic due to lack of sidewalks. The nature of business and industries on South Boulevard creates congestion at the intersections of Evans and Bidwell. This causes law enforcement to regularly use the S. Boulevard/S. 14<sup>th</sup> and Evans Street alley entrance to get to the Public Safety Center.

The impact from the new project on Evans St. is concerning, and the added density that R3 could bring will add even more traffic.

The City's Comprehensive plan suggests implementing *minimum residential density and neighborhood design that is not imposing or uninviting to pedestrians*. The Sawtooth project is a good place to apply this suggestion. We recommend that the space be left open for overflow parking, or even improved as a public space, that would support the activities of the Gunnison County Fairgrounds. If its going to be rezoned, R2 would be a better fit for the existing project and neighborhood.

We appreciate the opportunity to provide input, thank you.

Respectfully,

The block contains two handwritten signatures in blue ink. The first signature, on the left, is cursive and appears to read 'Mary Burt'. The second signature, on the right, is also cursive and appears to read 'Matthew Burt'.

Mary Burt

Matthew Burt

415 S. 14<sup>th</sup> St. # 3  
Gunnison, CO 81230



## VALLEY HOUSING FUND

City of Gunnison  
Planning and Zoning Commission and City Council  
201 W Virginia Ave.  
Gunnison, CO 81230

15 May 2023

To The City of Gunnison Planning and Zoning Commission and City Council:

The Board of Directors of the Valley Housing Fund wishes to express its support for the rezoning of Parcel 2, Fred R. Field Western Heritage Center from industrial to R3 residential to accommodate the second phase of the Sawtooth Community Housing development.

Placing housing within city limits reduces the overall costs and challenges associated with affordable housing development by providing an opportunity to connect to central infrastructure and city services. It also offers homes in a convenient location that is close to public transportation, schools, and grocery stores. By rezoning this parcel to R3 residential, it will be better utilized to provide long term homes for Gunnison County residents.

The 30 new rental and for sale housing units targeting an average of 80% AMI that are proposed for this site align with City, County, and community developed goals to increase affordable housing in the Gunnison Valley. Our housing shortage has escalated significantly over the past several years, placing an unsustainable strain on local workers, business owners, longtime community members, and newcomers alike. Both phases of the Sawtooth Community Housing Project will ease the negative impacts of this housing crisis on our local economy and on the mental health of our residents who are continuously experiencing housing insecurity.

The Valley Housing Fund supports this effort to increase local affordable and attainable workforce housing, and strongly urges the Planning and Zoning Commission and City Council to rezone this parcel to R3 residential. It is critical that we keep medical professionals, teachers, trades workers, volunteers, and employees across all industries from moving out of the Valley and taking their skills with them.

Respectfully,

Jim Starr  
Vice President, Valley Housing Fund Board of Directors

**May 9, 2023**

**REGULAR SESSION  
GUNNISON CITY COUNCIL**

**5:30 P.M.**

The Gunnison City Council Regular Session meeting was called to order on Tuesday, May 9, 2023, at 5:33 p.m. by Mayor Diego Plata in Council Chambers, located at 201 W. Virginia Avenue in Gunnison, Colorado. The Regular Session was also broadcasted via Zoom. Present in Council Chambers were Mayor Plata, Mayor Pro Tem Logan, Councilor Gelwicks, Council Miles, Councilor Freeburn, City Attorney Fogo, City Manager/Finance Director Cowan, City Clerk Boucher and Western Liaison KC Wenzel. Also present in Council Chambers were Community Outreach Liaison Ricardo Esqueda, Police Chief Keith Robinson, Public Works Director David Gardner, Water Superintendent Mike Rogers, Electric Superintendent Will Dowis and Planning Technician Caree Musick. Representatives from JVA Engineers attended in-person and online. Community Development Director Anton Sinkewich attended online. Many members of the public attended in-person and online. The press was present. A Council quorum was present.

**Public Input.** Mayor Plata reviewed the City's expectations for Public Input with the audience.

Gunnison resident Steve Schechter expressed concern about the City's recent city manager hire who has limited electric department experience and with Council for not having training in electrical markets or the electrical grid. Mr. Schechter encouraged Council to develop a new contract with its current energy supplier MEAN or to find a different provider. Gunnison needs to be a strong independent energy provider.

Celeste Helminski, Executive Director of the Gunnison County Chamber of Commerce, approached Council to promote the Chamber's up-coming Spring Fling/Summer Forecast event at the IBar on Friday, May 12, 2023.

Gunnison resident Peter Calager spoke to Council about the regulation of non-licensed electric travel devices such as skateboards and e-bikes on City streets and sidewalks. He didn't know if the City had regulations regarding them but asked that the City manage their usage and speed for the safety of residents and visitors.

Mayor Plata called for other public input. There were no additional public comments in-person or online.

**Council Action Items.**

**Energy Performance Contract Collateralization.** City Manager/Finance Director Ben Cowan shared with Council that the City is finalizing the energy performance contract with the State of Colorado Energy Office. This contract will result in energy improvements throughout City facilities. Key energy savers will come from a variety of lighting changes, HVAC upgrades, and weatherization projects. The federal government recently raised interest rates again; therefore, the City is interested in scaling back the initial scope of the work because the interest costs are exceeding the payback period needed to facilitate the overall financial package. With the recent rate increases, including an ice melt system for a cost of \$109,000 for the Jorgensen Ice Rink does not make financial sense as it does not generate savings; however, the ice melt system would be beneficial because it mitigates a safety hazard and would save on labor. Employees currently hand chip the ice between the indoor and outdoor rinks. Mr. Cowan asked if Council would like to fund that project separately. Bids for the project and design work have already been completed.

Finance Director Cowan also presented a new financial avenue for Council to consider. Lenders prefer to have one facility used for collateral rather than many smaller units throughout an organization. Smaller units or equipment are often below capitalization thresholds and are not specifically insured, so a listing of equipment as collateral can increase interest rates. Furthermore, this creates a blanket Uniform Commercial Code encumbrance on most City facilities that may be an issue in the future if the City tried issue debt for an improvement on that facility. A way to reduce the interest rate in a material way is to substitute a critical facility for the improvements themselves. This is commonly done to make the lender feel comfortable that the City will make required payments on the lease. If something comes up in the future, the facility can be easily substituted with another facility. The facility should be roughly aligned with the value of the financial package. The City of Gunnison City Hall is an ideal candidate. Finance Director Cowan introduced Troy Bernberg of Northland Securities to answer any questions.

Mr. Bernberg relayed that the building can be collateralized as a part of the construction project or as a separate or substituted piece. Substitute collateral is quite common and can result in a lower interest rate and is a simpler process for the lender. Staff is seeking direction from Council on how to proceed with these two items in order to finalize the contract and receive approval from the State of Colorado.

Council asked a few follow-up questions about the ice melt system. Staff shared that the ice melt system would not be incorporated into the energy performance contract, but McKinstry could incorporate this project into the overall scope of work at the ice rink. Council expressed no objections with removing the ice melt system from the energy performance contract and to pay for it separately and to move forward with City Hall as substitute collateral for the energy performance contract.

**License Agreement for Taco la Esquina.** The City of Gunnison's Community Outreach Liaison Ricardo Esqueda and Community Development Planning Technician Caree Musick approached Council along with Silvia Victoria Perez Hernandez who submitted an application for a License Agreement at 618 West Tomichi Avenue for her new business Tacos la Esquina. The request was for an allowance of café seating that would extend 24 feet into the 12th Street right-of-way. Senora Perez Hernandez would operate her food truck through a conditional use permit. The request for a conditional use permit to operate the food truck will be put before the Planning and Zoning Commission at the end of the month. Staff is recommending approval of the conditional use permit. She will place tables in the right-of-way area and is required to maintain the 30-foot sight triangle clear from café tables, chairs or other obstacles as stated in the *Land Development Code*. Staff thinks the business will help increase the vibrancy of that area. Council emphasized the importance of safety at that corner and the need to keep the right-of-way clear of obstacles since the location lacks a crosswalk at 12<sup>th</sup> Street. It was suggested by Council for staff to follow up with CDOT about a possible crosswalk at 12<sup>th</sup> street across Highway 50. Mayor Pro Tem Logan moved and Councilor Freeburn seconded the motion to approve the license agreement for a conditional use permit for Taco la Esquina.

Roll call, yes: Freeburn, Miles, Gelwicks, Logan, and Gelwicks. So carried.

Roll call, no: None.

**Update on the Water Treatment Plant.** Mayor Plata introduced the agenda item. He said that staff and the engineers will give a presentation on the scope, size, location, and process that has gone into this topic and then he will ask for public input. City Manager Cowan stated that a water treatment plant must be constructed and there is not an option for non-action. The water system is at risk in terms of contamination and at risk of having water calls on it in years of drought. The City wants to be proactive and not wait for the State of Colorado to mandate the work under their timeline. The Water Master Plan that the City adopted in 2021 sited VanTuyl as the location that makes the most sense because the City's water rights are there, the water quality is high and there is good accessibility to the existing distribution system.

Public Works Director David Gardner introduced the JVA engineers who have been working on this project. They are Kevin Tone, Josh McGibbon, and Mandy Rasmussen. Water and Wastewater Superintendent Mike Rogers and City Engineer Cody Tusing have also been contributing members. Director Gardner gave a brief overview of the evening's presentation and topics related to the water treatment plant. Superintendent Rogers started by summarizing the history of water in Gunnison. Key dates are 1883 when the town pipeline was appropriated at 15 c.f.s. In 1953, the City completed a water treatment plant filter upgrade. Ten wells were drilled throughout the City in 1958, 1960, 1966, 1976, and 1999. In 1967, the Water Treatment Plant located at today's Public Works campus was abandoned. In 1993, the City purchased VanTuyl Ranch for water usage and in 2021, the Water Master plan was adopted. Gunnison's current water treatment system consists of nine potable wells which are located in the middle of streets and by the school. Chlorine gas is used for disinfection through a Down Well Chlorination process. CDPHE has grandfathered Gunnison in to still use this process but is not allowed anywhere else. The current system has a high risk of contamination because of the shallow aquifer underneath the streets and the City has no additional treatment capabilities.

Director Gardner outlined why the City purchased VanTuyl in 1992. The land was purchased to protect the City's domestic water supply and preservation of the aquifer, to meet increased water

demands as the city grows, to protect the city's water source by restricting residential and commercial development in the area, to utilize irrigation to continue to fulfill City's water rights, and for future water storage. Staff and the engineers used multiple applicable planning documents to understand the previous and current uses of the land and to establish priorities and preferences regarding the development of a water treatment plan. Documents used include the 2010 VanTuyl Ranch Management Plan, 2012 VanTuyl Ranch Annexation, 2021 Gunnison Water Master Plan, and 2022 Source Water Protection Plan.

The presentation was turned over to Josh McGibbon of JVA Engineers to explain why VanTuyl was chosen as the preferred location for a water treatment plant. In 2021, several sites were considered. They were the Water Storage Tank Site behind Western, the current Public Works facility, on the Lazy K property where affordable housing has been built, and far north of the City by the O'Fallon Ditch. A few sites were considered at the VanTuyl Ranch; however, the preferred site was the VanTuyl Headquarters. This site met all of the criteria, which includes proximity to the water source, piping, city utilities, near water storage, and near the city water main connection. The Ranch Headquarters already has some development. Mr. McGibbon summarized the proposed improvements related to this project. They include but are not limited to the creation of a water treatment plant, development of an infiltration gallery and pump station, buried pipelines, future water storage, and a water shop to house a lab and facility operations and equipment. A groundwater well manifold (wells 7, 9, 10) could provide for treated water redundancy and small rooftop solar arrays are included to allow for access to grant dollars and provide a backup energy source. Other possible improvements were recreation focused. At this location, the plant could coexist with the surrounding environment and wildlife, an active cattle ranch, and continue to accommodate agricultural use.

Mandy Rasmussen who attended online acknowledged the importance of the recreation use, the beauty of the VanTuyl Ranch area, and preservation of the agricultural uses. She shared her screen to display a preliminary site plan. She explained that the first development would be the infiltration gallery and the raw water pump station located close to the river and off of County Road 15. Geotechnical work has been occurring in that area to confirm groundwater in that area. A pipeline will go from the river and run north to the water treatment plant near the Ranch Headquarters. There will be parallel pipes with the infiltration galley, raw water, and well manifold system. At the ranch headquarters the treatment plant and water shop facility would be built. Kevin Tone discussed the details of those two buildings. Both buildings are in the conceptual design stage and are still under discussion for exact size and space needs. Mr. Tone showed an image of a traditional water treatment plant that typically has a large footprint, and an image of a ranch-style, enclosed treatment plant that could complement the ranch buildings and structures already on site there. He showed images of what the buildings could look like on the ranch from a trail-user perspective. Berms and screens could also be installed to create a smaller visual impact.

Mike Rogers outlined potential funding opportunities from a variety of state and federal agencies totaling over \$13 million dollars, which could be more than or up to half the costs of the project. Mr. Tone emphasized that not doing the project at all is not an option. Concerns are that potentially harmful contaminants cannot be fully removed from the current system, by not using the City's full water rights they could be called upon for other uses, the CDHPE will not allow the additional wells, the current wells are located in protected locations and chlorine gas is used to disinfect the water. Mr. Tone gave a final summary of points the engineers and staff presented to Council. Mr. McGibbon spoke about the project's next steps which include completion of the preliminary design report, updates to the VanTuyl Management Plan, a PUD amendment, an environmental impact study, design the plant, and confirm external funding. The environmental study will be presented to Council and the public for input. Upcoming key dates are a PUD public hearing with the Planning and Zoning Commission on June 14, a PUD amendment public hearing before Council on July 11, the VanTuyl Management Plan update and approval, and the second reading of the PUD amendment ordinance on July 25th. The engineers stated that any facility design will be within the City's zoning requirements; therefore, the height of the buildings will be below 35'. The actual treatment system is yet to be determined and will depend on what is discovered in the testing. Recommended treatment systems will be included in the preliminary design report. Director Gardner shared that he has had conversations with those working directly on the agricultural operations at the ranch and they expressed no major opposition. The reservoir is slated for future development. Council expressed appreciation for the presentation including the explanation for why the land was originally purchased and the need for a water treatment plant.



Mayor Plata opened the meeting to public input.

Brooke Zanetell, lifelong Gunnison resident, stated that she is not convinced that the current water treatment system is unsafe or unreliable as it has worked for the past 67 years. A new water treatment plant is a large operation and could result in malfunctions that the taxpayers will be financially responsible for, or it would require more grants. She asked that a proposal be presented to residents on how the City could make the current system more resilient. The diversity of wells is a benefit of the system and money could be better spent on pinpointing PFAS in the wells and educating the public about the sources of PFAS.

Andy Sovick, former City Councilmember and resident who lives adjacent to the proposed water treatment plant site, spoke to NIMBYism. After reading through the Water Master Plan, he concluded that the suggested site is the best place for a future water treatment plant. This is a big decision and time should be given to consider impacts to all of the residents of the City, including its wildlife, birds, the underrepresented, and the trees. Additional thought should be given to potential light and noise pollution.

Sonja Chavez, general manager of the Upper Gunnison River Water Conservatory District, stated that her organization participated in source water planning with the City and supports the City's stated need for water redundancy within the water system. It is important to take advantage of the surface and ground water supply. The longer the development of a water treatment plant is pushed off, the more expensive it will be to build and operate. Contamination within groundwater, caused by fire, for example, would take a minimum of 7-10 years to filter through and address. There is no water redundancy anywhere within Gunnison County.

Gail Sovick, as a resident who lives adjacent to the proposed site, stated that she would like to be involved in the design process. Overall, she sees the need for the plant and thinks it has been well thought out. She has ideas about how about the City could re-assess the VanTuyl property and increase its use through interactive, educational opportunities for kids, composting, and winter parking for the Nordic trails. She emphasized the importance of the night sky and agreed with the previous comment about looking at options within the existing system. Mayor Plata stated that staff has looked at the current system and it was determined that the current system lacks the reliability and preparation for growth that is needed in the future.

Steve Schechter stated that the City does need a water treatment plant and as a professional solar installer he emphasized the importance of having the correct design and installation of roof top solar panels to ensure that they function properly. He also suggested Council and staff consider a back-up battery system for a water treatment plant and seek out grants for battery and solar power supplies.

Phil Crossley said he appreciated efforts to minimize the impact of such a facility by placing it on a disrupted area and designing a facility that mimics a ranch. He also asked the City to be very transparent with residents about the costs and the final design. He wants to see where the pipes will be installed because of the impacts of trenching on the trails and the irrigation system. He is concerned about the creation of tumbleweed habitat that can emerge after the land is disrupted. Reseeding needs to occur immediately.

Arly Landry asked if the City has inquired about acquiring acres of land for a plant that are not so beloved by the City. She said that construction on the VanTuyl Ranch for a plant and reservoir in the future will have effects on the land and the user experience. She asked about the timeline of the project and expressed concern about the impacts on bird habitat and what will be the impacts of sound from the facility. She suggested that part of the land goes into a conservation easement in the future.

William Bennett asked about the projected lifespan of a water treatment plant and reservoir built especially in relation to future population growth.

Keriann Conroy stated that her primary opposition is because the VanTuyl Ranch is a fully functioning ecosystem. She acknowledged that the City is waiting on an environmental impact study, but the City should be thinking through all impacts to the agricultural, wildlife, and wildland



interface during the concept design. She noted that the suggested enhancements are human-centered.

David Smith asked why the City is going forward with Gunnison Rising when it is looking at building a water treatment plant for millions of dollars. He suggested building the treatment plant at Gunnison Rising.

Stewart Schneider appreciated the presentation and public comments. He suggested staff consider the costs of running and maintaining a water treatment plant after it's built and how it will be continued to be paid for.

Zach Reyez asked if Public Works would be able to be moved to a different location.

Jennifer West, who attended online, asked how accurate are the grant estimates.

Brooke Zanetell brought up the infiltration gallery and stated that it is a big operation to build an infiltration gallery. She asked specific questions about the size, functionality, and impacts to the groundwater of it. She wants more information regarding the infiltration gallery. She mentioned the flow of the Gunnison River into the VanTuyl Ranch area and that wetlands are the best place to store water.

Mayor Plata asked for final input from the public. There was none.

JVA Engineers and staff responded to the concerns and questions that were brought up. First, since water regulations have changed over the last 50 years, the system the City has now would no longer meet those regulations. Mr. Cowan stated that the State of Colorado is more concerned about communities meeting water quality standards than the costs of a water treatment plant. He explained that Gunnison has possible access to eight million dollars in grant funding and debt forgiveness and up to \$5 million in loan forgiveness from the Federal government. This plant is a high priority for the State because the City does not have an actual plant. Another part of the funding will come from increasing rates for two more years. The hope is to get one-time grant funding to help pay for the plant and to help keep rates from increasing in the future.

Gunnison Rising is a private development and not the right location for a water treatment plant. Gunnison Rising uses a different water source and would not be compatible with the City's current water sources. The City is being proactive with its plans, conceptual design, and seeking funding from external sources. The City really only has one source of water, which is a shallow system. The Water Master Plan that the City recently conducted emphasized the importance of having a redundant water source and using the City's senior water rights. The City wants and needs high producing wells.

Mayor Plata summarized that the City needs a water treatment plant and it would be irresponsible to not build one. All of the public's comments are valid and have been heard, but steps must be taken to have greater water redundancy and a system in place to protect against contamination. New State water regulations and requirements cannot be ignored. VanTuyl is a special place and important for wildlife habitat and mental wellness, and safe drinking water is a must for the City.

Joe Dix approached Council to have the estimated cost of \$20-\$30 million restated by Mr. Cowan. Mayor Plata restated that the projected construction timeline will be 18 to 24 months.

The useful lifespan of a water treatment plant is a minimum of 30 years. This facility will be built so that the City can continue to grow into it over time without needed additions in the future. The forthcoming preliminary design report will include the cost of the facility as well as 20 years' worth of operational and maintenance costs. It was said again that the outer appearance of the building and surrounding landscaping is under discussion as staff and Council are continuing to take public input. The conversation about building a water treatment plant began in 2019 with the Water Master Plan and the conversation is continuing with public input as the project moves forward.

**Council went into recess at 7:55 p.m. and returned to the Regular Session at 8:12 p.m.**

**Consent Agenda.** Councilor Gelwicks moved and Mayor Pro Tem Logan seconded the motion to approve the Consent Agenda with the following items: 1) approval of the April 25, 2023, Regular Session Meeting minutes; 2) excuse Councilor Miles from the April 25, 2023, Regular Session meeting; and 3) excuse Councilor Freeburn from the April 25, 2023, Regular Session meeting for personal and medical reasons.

Roll call, yes: Plata, Logan, and Gelwicks. So carried.

Roll call, no: None.

Roll call, abstain: Freeburn and Miles.

**Update on One Valley Resiliency Roadmap.** Community Development Director Anton Sinkewich introduced Clark Anderson of Community Builders and Cathie Pagano, Gunnison County Community Development Director, all of whom were attending online. Community Development Director Sinkewich started by reminding Council that this work is funded through a grant from the Department of Local Affairs. The purpose of the One Valley Recovery Roadmap is intended to build upon the success of the One Valley Prosperity Project and to bring together all jurisdictions and communities in the Gunnison Valley to address major challenges to create a more resilient Gunnison Valley. The presentation transitioned to Clark Anderson of Community Builders who displayed a power point presentation. Cathie Pagano seconded Director Sinkewich's opening comments and emphasized that the Recovery Roadmap is building upon past successes and outcomes of the One Valley Prosperity Project.

Gunnison is known for having a history of collaboration and the four primary jurisdictions are connected through a regional economy, market dynamics, and movement throughout the valley for personal and professional reasons. Each community in the Gunnison Valley plays a unique role and contributes to the Valley. The purpose of the One Valley Resiliency Roadmap project is to improve regional collaboration on shared priorities, and to seek alignment among regional partners for a more resilient region and agreed upon shared goals and strategies to guide regional action on shared priorities. The areas of regional collaboration and action are 1) providing community housing, 2) land use, transportation, & infrastructure, and 3) strengthen civic capacity. The shared regional priorities are 1) community, especially during this time when the communities are growing and changing, 2) equity & inclusion, which means bringing new and different voices and perspectives to the table and in policy-making work, 3) climate & environment, which will focus on taking actions around protecting the environment and addressing issues and impacts of climate change. This project will deliver the One Valley Roadmap, a unified strategy to address shared regional priorities that include a regional housing strategy, a land use, transportation, an infrastructure framework, and a civic capacity action plan. This project is to occur in three phases that began in November 2022 with the conclusion estimated date to be in July 2023.

Mr. Anderson gave a high-level overview of each shared priority, starting with land use, transportation, & infrastructure, followed by housing, and finishing with civic capacity. For each shared priority he listed common challenges and regional goals. He provided Council with ideas from each priorities' action plan on how the One Valley Recovery Roadmap can help the valley work together to address the challenges and to achieve the shared goals. Council gave Mr. Anderson feedback on the strategies and action plans regarding more clarity around complete streets and great neighborhoods. It was expressed that this is a great benchmark of where the region is today. Civic capacity needs to be given the same attention and focus as the other priorities. Mr. Anderson mentioned that one of the specific challenges around civic capacity was having the resources available to dedicate to improving civic capacity. Next steps for the project are to reconvene the regional leadership and action teams and present the final plan to jurisdictions in July 2023. Mayor Plata thanked everyone who has been involved in this process and work.

**Appointment of Deputy City Clerk.** City Clerk Erica Boucher approached Council along with Laura Buffington in regards to the Deputy City Clerk position. The purpose of this agenda item was for Ms. Buffington to be appointed Deputy City Clerk by City Council. Clerk Boucher shared with Council that Ms. Buffington has the qualifications, professional experience, and readiness to move into the position. This position became open when Cassie Mason submitted her resignation on April 5, 2023. City Clerk Boucher explained that Ms. Buffington will take on the primary duties of the Deputy City Clerk as well as the Municipal Court responsibilities. Updating the Deputy City Clerk job description to acknowledge Ms. Buffington's skills and experience will result in a streamlined administrative transition for staff and the public. The third clerk's position was reformatted to include the primary duties of communications assistant and records management.

The City is accepting applications. Ms. Buffington thanked staff and Council for their support. City Manager Cowan seconded the professional qualities and abilities Ms. Buffington has that Clerk Boucher shared and also noted her positive and can-do attitude in the office. Council acknowledged the importance for professional succession opportunities within the City and its commitment to professional development.

Mayor Pro Tem Logan moved and Councilor Gelwicks seconded the motion to appoint Laura Buffington as Deputy City Clerk.

Roll call, yes: Logan, Gelwicks, Freeburn, Miles, and Plata. So carried.

Roll call, no: None

**Ordinance No. 5, Series 2023, First Reading:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Repealing Ordinance No. 7, Series 1992.* Councilor Gelwicks introduced Ordinance No. 5, Series 2023, and read it aloud by title only. Councilor Gelwicks moved and Mayor Pro Tem Logan seconded the motion to pass and ordered to publish on first reading.

City Manager Cowan and Police Chief Robinson confirmed that Ordinance No. 7, Series 1992, is an outdated ordinance that needed to be repealed.

Roll call, yes: Gelwicks, Freeburn, Miles, Plata, and Logan. So carried.

Roll call, no: None.

**Resolution No. 8, Series 2023:** *A Resolution of the City Council of the City of Gunnison, Colorado, Commending KC Wenzel for Outstanding Services as the Student Liaison of the Gunnison City Council, Representing Western Colorado University from September 28, 2021, to May 9, 2023.* Mayor Pro Tem Logan introduced Resolution No. 8, Series 2023, and read it aloud in full. Mayor Pro Tem Logan moved to adopt Resolution No. 8, Series 2023, and Councilor Gelwicks seconded the motion. Council thanked Mr. Wenzel for his service and wished him the best in the future.

Roll call, yes: Freeburn, Miles, Plata, Logan, and Gelwicks. So carried.

Roll call, no: None.

**Award Contract for Construction Services for Distribution System Improvements.** Electric Superintendent Will Dowis came before Council to receive authorization to award and execute a contract for construction services for the distribution circuit improvements project. This is a multi-year and multi-phase project. It was confirmed that the contract states that the workers will have a 25-foot radius from the center of the pole to work within. Councilor Gelwicks moved and Mayor Pro Tem Logan seconded the motion to authorize the City Manager to award a contract to Altitude Energy for construction services for distribution circuit improvements for an amount not to exceed \$628,335.62.

Roll call, yes: Miles, Plata, Logan, Gelwicks, and Freeburn. So carried.

Roll call, no: None.

**Public Works Semi-Annual Report.** Public Works Director Gardner approached Council and shared highlights of Public Works' most recent projects. They include but are not limited to: working on funding ideas and education related to street maintenance and improvements, the transition to four, ten hour work days for the summer, grants for the Ohio Avenue Street Enhancement project, working with developers on housing developments, and Gunnison Rising. He also mentioned the completion of the Palisades street construction and paving project. The sewer expansion project has been designed with a CMAR, but the bid process has not begun. Staff has been working with Community Development on quick wins related to transportation and multi-modal travel. All departments have been busy completing daily tasks, streamlining processes, and working on special projects, such as a water treatment plant, a new SCADA system at the Wastewater Treatment Plant, the solar project at the airport, electrical expansion, and replacement of heavy equipment. A recycling technician was hired. The Facilities Manager has been busy completing projects throughout City facilities and working on the energy performance audit with McKinstry. Council thanked Director Gardner for his and his staffs' work throughout the year.

**Staff and Council gave brief reports.** City Attorney Fogo informed Council that SB23-213 was cancelled but may come back before legislation in the future, hopefully in a better form. May 9, 2023, was Western Liaison KC Wenzel's final meeting. Leah Taylor will begin her term on Tuesday, May 23, 2023. Councilor Jim Miles intends to resign from Council before the next election for personal and medical reasons. CDOT approved the four new variable speed signs to

be installed on state highways. Staff was successful in intervening with the Colorado Cable Television Association. The administrative judge overturned the intervention and concluded the City was asking for basic 911 service needs. This allows for an increase of \$2 to \$3 which will be used for the construction of a repeater line to cover CB South through a sophisticated software system.

**Council continued the Regular Session into a Work Session to discuss the street funding strategy.** Mr. Cowan noted that Council’s packet included a revised letter of support for allocation of the Rec Improvement fund from PRAC. The purpose of the work session was for Council to discuss the recent feedback received from the public and information from staff on how to proceed regarding the presented street funding options. Staff is seeking direction on if and how the City should move forward. PRAC chair Kathleen Kinkema, who was online, confirmed to Council that PRAC was in strong consensus in their support of a reallocation of funds from Rec to streets with their outlined points, but may not be in complete agreement regarding a recommendation on the sunset. That is more of a decision for Council. Due to the late hour, Council chose to postpone the discussion until the next meeting.

**With no additional business to come before Council, Mayor Plata adjourned the Regular Session at 9:50 p.m.**

(Seal)

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Mayor

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City Clerk

**RESOLUTION NO. 9  
SERIES 2023**

**A RESOLUTION OF CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO,  
COMMENDING GREG LARSON FOR HIS CONTRIBUTIONS TO THE CITY OF GUNNISON  
PLANNING AND ZONING COMMISSION**

**WHEREAS**, Greg Larson has served on the City of Gunnison Planning and Zoning Commission from July 2009, through May 2023; and

**WHEREAS**, Greg Larson has served as Chair on the City of Gunnison Planning and Zoning Commission from June 2013, through May 2023; and

**WHEREAS**, Greg Larson, by his thoughtful consideration of matters before the Commission has served the best interests of the City of Gunnison, resulting in substantial benefits to the citizens of today and the future; and

**WHEREAS**, during his service on the Planning and Zoning Commission, Greg participated in the development and passage of the *VanTuyl Ranch Management Plan* and VanTuyl Ranch PUD and Annexation, review of the *Gunnison Rising PUD Development Standards* and Annexation (2009) and Major Change to Gunnison Rising PUD; the City's *Sign Code*, the *Non-Motorized Transportation Plan*; review and revision of the *Land Development Code*, *Gunnison Vibrancy Initiative*, *West Gunnison Park and Master Plan*, *Comprehensive Plan 2030*, and review and participation in processing numerous land use applications; and

**WHEREAS**, Greg Larson has unselfishly given of his time and sound judgment to successfully carry out the duties of Planning and Zoning Commissioner.

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF GUNNISON, COLORADO, THAT:**

**Section 1.** Greg Larson is hereby commended and thanked for his generous donation of time, knowledge and dedicated service to the City of Gunnison Planning and Zoning Commission; and

**Section 2.** Greg Larson is wished continuous success and good fortune in future endeavors.

**INTRODUCED, READ, PASSED AND ADOPTED** this 23<sup>rd</sup> day of May, 2023.

(SEAL)

\_\_\_\_\_  
Diego Plata, Mayor

ATTEST:

\_\_\_\_\_  
Erica Boucher, City Clerk

# Memorandum

To: City Council  
From: Keith Robinson, Chief  
Date: May 23, 2023  
Subject: Ordinance No.5, Series 2023  
Repealing Ordinance No. 7, Series 1992



Ordinance No. 7, Series 1992 was adopted to provide directions for the disposal of unclaimed funds held by the City's Finance Department. The ordinance was also utilized by the police department for disposal and conveying ownership to the City of Gunnison for disposal of property held by the department.

The City Finance Department has not relied upon the 1992 Ordinance for many years, and instead disposes of unclaimed funds pursuant to state statute.

The Gunnison Police Department has adopted a new policy dealing with Non-Department Property under our control which has been reviewed by the City Attorney and conforms to Colorado State Statute and follows the guidelines provided by Lexipol and best practices.

Ordinance No.5, Series 2023 is being introduced to repeal Ordinance No.7, Series 1992.

**ORDINANCE NO. 5  
SERIES 2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON,  
COLORADO, REPEALING ORDINANCE NO. 7 SERIES 1992**

**WHEREAS**, at a regular council meeting held June 9, 1992, the City Council of the City of Gunnison adopted Ordinance No. 7, Series 1992, entitled, “An Ordinance Providing for The Administration and Disposition of Unclaimed Property Which Is in The Possession or Under the Control of The City of Gunnison,” which Ordinance has been in effect since July 1, 1992 (“1992 Ordinance”); and

**WHEREAS**, the 1992 Ordinance was adopted initially to address disposition of unclaimed funds held by the City’s Finance Department; and

**WHEREAS**, the City Finance Department has not relied upon the 1992 Ordinance for many years, and instead disposes of unclaimed funds pursuant to state statute; and

**WHEREAS**, the 1992 Ordinance has been utilized by the Gunnison Police Department (“GPD”) to administer unclaimed property, however, the 1992 Ordinance does not address other property the Gunnison Police Department may have in its possession, whether such property is found, held as evidence, is held for safekeeping, etc.; and

**WHEREAS**, the Gunnison Police Department has developed policies over time to administer the disposition of such property, which has caused there to be numerous, and sometimes inconsistent policies; and

**WHEREAS**, in early 2023, the Chief of the Gunnison Police Department combined and organized all policies related to property held by the City of Gunnison Police Department, as well as rules for the Property Office and Property Custodian, into one policy that is now contained in the Gunnison Police Department policy manual and which is in compliance with Colorado State Statute and guidance provided by Lexipol policies used by the Gunnison Police Department; and

**WHEREAS**, the 1992 Ordinance is inconsistent with state statute and GPD policies and should be repealed in its entirety.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON,  
COLORADO ORDAINS THAT:**

Section 1. Ordinance No. 7, Series 1992 is hereby repealed in its entirety.

**INTRODUCED, READ, PASSED AND ORDERED PUBLISHED** this 9th day of May, 2023, on first reading, and introduced, read, and adopted on second and final reading this 23rd day of May, 2023.

\_\_\_\_\_  
Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
City Clerk

Published by Title in the  
*Gunnison Country Times* Newspaper  
May 18, 2023

**ORDINANCE NO. 6  
SERIES 2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, CHANGING THE ZONING DISTRICT CLASSIFICATION OF PARCEL 2, SAWTOOTH – PHASE 1 BOUNDARY LINE ADJUSTMENT FROM INDUSTRIAL TO R3 (MULTIFAMILY) AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF GUNNISON, COLORADO.**

**WHEREAS**, the Community Development Director of the City of Gunnison has filed an application with the City of Gunnison, Colorado, seeking a change of zoning of said real property; and

**WHEREAS**, the Planning and Zoning Commission of the City of Gunnison, Colorado, held a public hearing on said application pursuant to notice published in accordance with the *Land Development Code* of the City of Gunnison, Colorado, on April 26, 2023; and

**WHEREAS**, on April 26, 2023 the Planning and Zoning Commission of the City of Gunnison recommended approval of the Map Amendment application to change the zoning district classification to City Council based on findings of fact established through the proceedings of record; and

**WHEREAS**, the City Council of the City of Gunnison, Colorado, held a public hearing on the requested zoning change and amendment of the Official Zoning Map on May 23, 2023;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:**

**Section 1.** Based upon the application seeking a change in zoning of the property hereinafter described, the evidence presented to the City Council during the public hearing on the application seeking a change of zoning on property hereinafter described, and further, based on the recommendation of the Planning and Zoning Commission of the City of Gunnison, Colorado, the City Council hereby finds as follows:

- A. This Zoning Amendment application is to rezone Parcel 2, of the Sawtooth – Phase 1, Boundary Line Adjustment from Industrial to the R3 zone district.
- B. This rezoning of the Industrial parcel to R3 residential is compatible with the surrounding neighborhood and residential uses under construction.
- C. The rezoning of Parcel 2 from Industrial to R3 complies with the review standards for a zoning amendment.
- D. The zoning map amendment will not be a detriment to the community’s health, safety and welfare.

**Section 2.** Based on the foregoing findings of the City Council of the City of Gunnison, Colorado, the City Council hereby determines the change of zoning of the property herein described is in the best interest of the City of Gunnison, Colorado, and its citizens.

**Section 3.** The City Council hereby finds, determines, and declares that the power to zone, regulate land use, and apply development standards to real property are granted under Title 31, Article 23, Part 3 (Sections 31-23-301 through 31-23-314) of the *Colorado Revised Statutes*.

**Section 4.** The zoning classification of the real property described as Parcel 2, Sawtooth – Phase 1 Boundary Line Adjustment, Reception No. 567008, City of Gunnison, County of Gunnison, State of Colorado, is hereby changed from Industrial (I) to Multi-Family Residential (R3).

**Section 5.** The Official Zoning Map of the City of Gunnison, Colorado, shall be amended to reflect the change in zoning district classification of the property.



**INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED** this 23rd day of May, 2023, on first reading, and introduced, read, and adopted on second and final reading this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor

SEAL

ATTEST:

\_\_\_\_\_  
City Clerk



**To:** City Council  
**From:** Ben Cowan, Finance Director  
**Date:** Friday, May 19, 2023  
**Subject:** Energy Performance Contract

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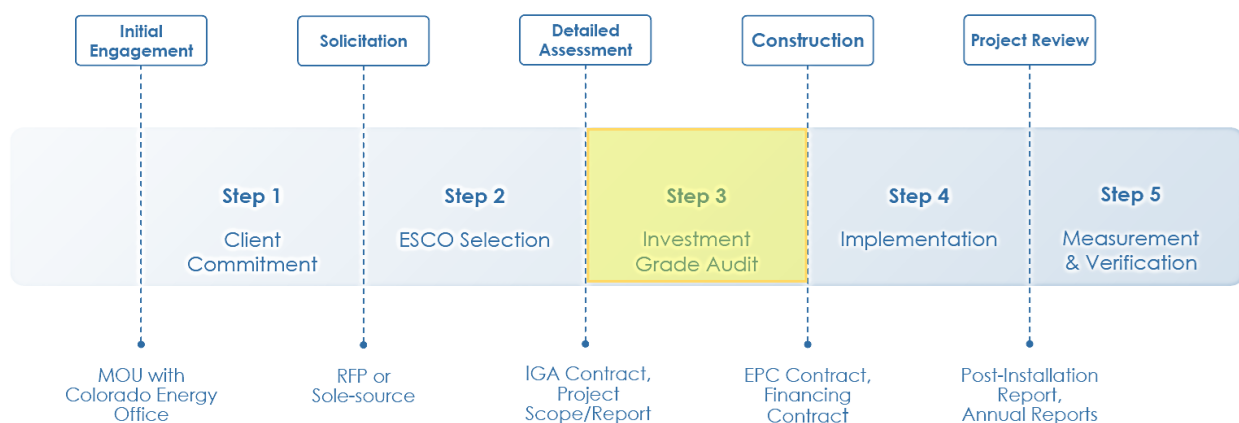
### Purpose:

To review the Investment Grade Audit and legal documents associated with commencement of the construction phase of the Energy Performance Contract.

### Background:

The City of Gunnison has executed a Memorandum of Understanding with the Colorado Energy Office (CEO)'s Energy Performance Contracting (EPC) Program. C.R.S. 29-12.5-101 allows the City of Gunnison to leverage utility cost savings to repay annual financing costs associated with certain types of facility upgrades. This financing mechanism uses the guaranteed utility savings and avoided future capital expenses to finance the acquisition/construction of capital improvements that increase energy efficiency at the City of Gunnison.

The total cost of the Investment Grade Audit was \$41,313.60. This is absorbed into the overall ESCO program.



The project includes the following facility improvement measures, which are expected to avoid 495 metric tons of CO2 greenhouse gases annually:

- Comprehensive Facility LED Upgrades
- Replacement of Softball Field lighting with dark-sky compliant LED lighting
- Solar photovoltaic systems on 5 facilities totaling 150 kW
- Building Automation System for the Community Center
- New back-up generators for the Community Center
- Level 2 Electric Vehicle (EV) charging station at Community Center
- On-site Chlorine Generation system at the Community Center
- Building Envelope measures (air sealing and weatherstripping)
- Recommissioning and Test & Balance at City Hall
- Recommissioning of the WWTP
- Condition Assessment of the Solar Thermal panels at the Community Center
- Humidity Control System for Zamboni Building at Ice Arena
- Night setback operation for Ice Arena ice-making machine
- Replacement of the main indoor Ice Arena make-up air unit
- Replacement of the infrared radiant heaters at the Indoor Ice Arena
- New snow-melt system for the Zamboni entrance to the Outdoor Ice Arena
- Furnace split-system with zoning-system for remodeled areas of City Shops
- Replacement of standing-pilot unit heater at the City Shops

The project includes the following capital funds from the City of Gunnison that were either budgeted or have been approved by Council by motion during 2023 (all of these items are funded through the Other Recreation Improvements Fund with the exception of the Public Works HVAC system, which is budgeted in the General Fund):

Public Works HVAC	\$27,000
Jorgensen Softball Field & Legion Basketball Court Light Replacements	\$690,000
Ice Rink Chiller	\$50,000
Humidity Control at Ice Rink Ice Melt Building	\$38,000
Ice Melt System Near Outdoor Ice Rink	<u>\$109,000</u>
<b>Total Capital Funds</b>	<b>\$914,000</b>

The total proposed project is just under \$4,019,177 Million, with \$3,830,736 for construction along with a contingency of \$125,370. The financed costs are \$2,331,362 with a hopeful rate

around 4.75% for 20 years. After inclusion of private placement and bond counsel costs, the total financed is \$2,395,305. Rates have been increasing as Chairman Jerome H. Powell announced the Federal Reserve will raise interest rates by 0.25 percent on May 3.

Troy Bernberg, Managing Director of Public Finance with Northwind Securities, has sent out several preliminary indications to banks that may finance the project with tax-exempt Certificates of Participation (COPs). Depending on the interest rate, scope may need to be cut from the project. We are hopeful that rates will be favorable and the figures will just be slightly modified with actual bids at the June 13, 2023 meeting.

You will find the detailed listing of Energy Conservation Measures on page 38 of the Investment Grade Audit, along with the cash flow demonstrating that the City will pay for the cost of financing with utility savings and avoided operational costs. The City will begin realizing savings as soon as the financing is paid off after 20 years.

Attached to this memo are the following materials:

- 1) 100% Investment Grade Audit
- 2) Request for Bid for Lease Purchase Agreement
- 3) Proposed Ordinance No. 7, Series 2023 to allow for the financing assuming terms can be reached with private banks. Bids are due prior to the June 13, 2023 meeting for second reading.
- 4) Lease Purchase Agreement
- 5) Site Lease
- 6) Draft Energy Performance Contract

#### **Staff Recommendation:**

The staff recommendation is to review the included documents in their draft form. This meeting requires the adoption of the parameters ordinance to facilitate second reading after receipt of bids on the lease purchase. Staff is also requesting acceptance for the Investment Grade Audit, with the associated cost to be rolled into the Energy Performance Contract financing.

#### **Council's Strategic Criteria:**

This policy initiative or project addresses/relates to each of these criteria as follows.

##### **A. Public Safety and Community Resilience.**

Broadening the City's access to energy sources increases resiliency for the community.

**B. Public Engagement which fosters racial and cultural equity, inclusivity, and diversity.**

Not applicable.

**C. Achieving the City's Environmental Sustainability Goals.**

By partnering with the State of Colorado, the City can join the efforts of the Energy Performance Contracting Program, which has saved to date:

- Electricity - 193 million kWh
- Natural gas, propane, heating oil & coal - 10.3 million therms
- Water - 507,560,000 gallons
- Annual utility cost savings - \$34.2 million
- Operations & Maintenance (O&M) cost savings - \$3 million

This initiative will allow the City of further its environmental sustainability goals by reducing energy consumption and lead by example in the community.

Specific to the City of Gunnison, this project will achieve a 20% total reduction and add renewable energy and resiliency to the City of Gunnison energy portfolio with 10% of total electrical load offset by solar.

**Action(s) Requested of Council:**

While these packet materials contain all documents that are interrelated, please find below the sequencing of requested actions from the Council over the next two meetings. While some specific amounts will change based on the actual financing bids received, the parameters ordinance is not expected to change unless requested by Council in some way.

**May 23, 2023**

- 1) A motion to accept the Investment Grade Audit Report presented by McKinstry.
- 2) Introduction of Ordinance 7, Series 2023 and request to read the ordinance by Title only.
- 3) A motion to approve Ordinance 7, Series 2023 on first reading.

June 13, 2023

- 1) A motion to authorize the City Manager to sign the Energy Performance Contract and associated schedules as presented in an amount not to exceed \$4,019,177.
- 2) A motion to approve the Lease Purchase Agreement for Energy Conservation Measures.
- 3) A motion to approve the Site Lease for Energy Conservation Measures.
- 4) Introduction of Ordinance 7, Series 2023 and request to read the ordinance by Title only.
- 5) A motion to approve Ordinance 7, Series 2023 on second reading.





# City of Gunnison

## 100% Investment Grade Audit Report

GUNNISON, CO  
MAY 16<sup>TH</sup>, 2023



FOR THE LIFE OF YOUR BUILDING

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# Overview

# Overview

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## 1. Overview

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# Overview

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# Overview

## 2.1. EXECUTIVE SUMMARY

McKinstry is pleased to present this Investment Grade Audit (IGA) report to the City of Gunnison. In April 2022, The City competitively selected McKinstry to perform an IGA under the State of Colorado's Energy Performance Contracting program. The IGA scope included 20 facilities with nearly 150,000 square feet spread throughout the City and Gunnison County.

The goals of the IGA were to evaluate the City's facilities for energy conservation, resiliency, renewable energy and facility improvement opportunities. Conducting the Investment Grade Audit uncovers opportunities to reduce utility and operational costs, address capital and maintenance needs, improve occupant comfort, generate power using renewable energy, and improve reliability and resiliency throughout the City's facilities. Additional benefit comes by the promotion of natural resource conservation of fossil fuels, advancing the objectives outlined in the City of Gunnison's Sustainability Plan and providing leadership to improve infrastructure for the community and future generations to come. As a result of this IGA effort, McKinstry has developed an Energy Performance Contracting project that results in a total project investment of approximately \$3.99M. Combined with a \$750k Tier II DOLA grant, a \$6k Charge Ahead Colorado grant, \$2.3k of lighting-related rebates, a \$232k Inflation Reduction Act ITC Direct Payment, an \$84k Department of Homeland Security Emergency Management Grant and \$914k of City capital, the resulting net financed cost is \$2.33M with annual utility and operational cost savings of \$102k. The resulting simple payback is 19.8 years.

At the time this report was written, the Inflation Reduction Act had just recently been signed. Although the full details and rules have not yet been released to the public, the Inflation Reduction Act will allow the City to receive a Direct Payment from the Federal Government to help offset the installed cost for the Solar PV systems which amounts to another \$232k of funding for the project.

This project offers a solution that will provide excellent long-term value and advances the goals identified by the City. The project includes the following facility improvement measures:

- Comprehensive Facility LED Upgrades
- Replacement of Softball Field lighting with dark-sky compliant LED lighting
- Solar photovoltaic systems on 5 facilities totaling 150 kW
- Building Automation System for the Community Center
- New back-up generators for the Community Center
- Level 2 Electric Vehicle (EV) charging station at Community Center
- On-site Chlorine Generation system at the Community Center
- Building Envelope measures (air sealing and weatherstripping)
- Recommissioning and Test & Balance at City Hall
- Recommissioning of the WWTP
- Condition Assessment of the Solar Thermal panels at the Community Center
- Humidity Control System for Zamboni Building at Ice Arena
- Night setback operation for Ice Arena ice-making machine
- Replacement of the main indoor Ice Arena make-up air unit
- Replacement of the infrared radiant heaters at the Indoor Ice Arena
- New snow-melt system for the Zamboni entrance to the Outdoor Ice Arena
- Furnace split-system with zoning-system for remodeled areas of City Shops
- Replacement of standing-pilot unit heater at the City Shops

A more detailed description of the proposed project is outlined within this Investment Grade Audit report. Construction is anticipated to begin in Q2 2023 with an estimated implementation period of 1 year. After final completion and project acceptance, a post-install report for all energy savings will be submitted and reviewed by the Colorado Energy Office (CEO). Through the subsequent Energy Performance Contracting process, the CEO will continue third party technical review and comment on the significant project milestones for a minimum of three years post-construction to assure that McKinstry's proposed solutions meet the State program's requirements and City of Gunnison's needs.

# Overview

The following table details the buildings within McKinstry's EPC scope.

*Table 1: Facilities Included in IGA*

Building	Acronym	Address	Square Footage	Year Built
City Hall	CIH	201 W. Virginia Ave.	11680	1931
City Shop	CIS	1100 W. Virginia Ave.	9491	1992
Electric Shop	ELS	1100 W. Virginia Ave.	5022	1987
Garage and Fleet Storage (Blue Barn)	BLU	1210 W. Virginia Ave.	7950	1978
Jorgensen Park - Event Center/Indoor Ice Rink	INICE	100 S. Teller St.	30900	2008
Jorgensen Park - Locker Room Building	LOC	100 S. Teller St.	1250	1970
Jorgensen Park - Outdoor Covered Ice Rink	OUICE	100 S. Teller St.	20000	1997
Van Tuyl Ranch - Rental Residence	VTR	349 County Road 14	1674	1982
Police Department and Dispatch	PDD	910 W. Bidwell Ave.	6266	2014
Community Center	GCC	200 Spencer Ave.	49953	2004
IOOF Park - Restroom Building	IOOF	124 E. Virginia Ave.	150	2007
Legion Park - Restroom Building	LEG	500 E. Tomichi Ave.	572	2017
Meadows Park - Restroom Building	MEA	1108 N. Colorado St.	105	2002
Storage Building	GSB	1100 W. Virginia Ave.	5300	2002
Tomichi Riverway Park - Restroom Building	TOM	150 Diamond Ln.	150	2004
Wastewater Treatment Plant - Commissioning	WWTP	Waste Treatment Rd.	52000	2021
Water Department Shop	WDS	1100 W. Virginia Ave.	4500	2007
Jorgensen Park - Restroom Building	JCO	191 S. Adams St.	150	2018
Jorgensen Park - Parks Building	PARK	151 S. Adams St.	3861	1978
Char Mar Park - Restroom Building	CHAR	500 Tincup Dr.	105	2003

2

## Base Year Energy Use

# Base Year Energy Use

## 2. Base Year Energy Use

### 2.1. CURRENT RATE SCHEDULES

The utility cost savings presented in this report are based on the following utility rates tariffs and schedules.

A list of buildings with their associated rate structures is shown in Table 2 below. Descriptions for each rate structure and type follow the chart.

*Table 2: Utility Rate Schedule Summary*

Facility		Electric Rate Schedule	Natural Gas Rate Schedule	Water & Sewer Rate Schedule
		Government	General	General
City Hall	CIH	X	X	X
City Shop	CIS	X	X	X
Electric Shop	ELS	X	X	X
Garage and Fleet Storage (Blue Barn)	BLU	X	X	X
Jorgensen Park - Event Center/Indoor Ice Rink	INICE	X	X	X
Jorgensen Park - Locker Room Building	LOC	X	X	X
Jorgensen Park - Outdoor Covered Ice Rink	OUICE	X	X	X
Van Tuyl Ranch - Rental Residence	VTR	X	X	X
Police Department and Dispatch	PDD	X	X	X
Community Center	GCC	X	X	X
IOOF Park - Restroom Building	IOOF	X	X	X
Legion Park - Restroom Building	LEG	X	X	X
Meadows Park - Restroom Building	MEA	X	X	X
Storage Building	GSB	X	X	X
Tomichi Riverway Park - Restroom Building	TOM	X	X	X
Wastewater Treatment Plant - Commissioning	WWTP	X	X	X
Water Department Shop	WDS	X	X	X
Jorgensen Park - Restroom Building	JCO	X	X	X
Jorgensen Park - Parks Building	PARK	X	X	X
Char Mar Park - Restroom Building	CHAR	X	X	X

# Base Year Energy Use

## 2.2. ELECTRIC RATES

Municipal Energy Agency of Nebraska and Western Area Power Administration are the electric utility wholesale power suppliers who provide electric power to the City of Gunnison for all the facilities included in the IGA. All the meters that are associated with buildings analyzed during this project are on a single rate structure, City Government Service.

The most recent rates dated 1/10/2023 are used as the basis for the savings calculations. Refer to Table 3: Electric Rate Analysis below for calculation of City of Gunnison Electric Utility Rate.

Table 3: Electric Rate Analysis

Electric Rate Analysis						
Rate	1/1/2020	4/10/2020	2/10/2021	1/10/2022	5/10/2022	1/10/2023
	kWh	kWh	kWh	kWh	kWh	kWh
Commercial/ City Government	\$0.09	\$0.09	\$0.09	\$0.09	\$0.10	\$0.10
Residential	\$0.08	\$0.09	\$0.09	\$0.09	\$0.09	\$0.09

## 2.3. GAS RATES

Atmos Energy is the natural gas provider for all the facilities included in the IGA. The meters that are associated with buildings analyzed during this project are on a single rate structure.

The most recent rates dated 9/8/22 are used as the basis for the savings calculations. Refer to Table 4: Natural Gas Rate Analysis below for calculation of gas rates.

Table 4: Natural Gas Rate Analysis

Gas Rate Analysis						
	1/7/2021	6/5/2021	9/8/2021	5/6/2022	6/7/2022	9/8/2022
	CCF	CCF	CCF	CCF	CCF	CCF
Facility Charge	\$27.98000	\$27.98000	\$27.98000	\$28.59000	\$28.59000	\$28.59000
Commodity Cost	\$0.28293	\$0.28293	\$0.41056	\$0.72980	\$0.72980	\$0.76326
Franchise Fee	\$0.05000	\$0.05000	\$0.05000	\$0.05000	\$0.05000	\$0.05000
G-DSMCA-Volumetric Charge	\$0.00289	\$0.00316	\$0.00316	\$0.00316	\$0.00185	\$0.00185
Upstream Cost	\$0.20149	\$0.20149	\$0.20385	\$0.21048	\$0.21048	\$0.20280
Deferred Gas Cost	-\$0.05580	-\$0.05580	-\$0.04820	-\$0.04820	-\$0.04820	\$0.06250
Sum	\$0.48151	\$0.48178	\$0.61937	\$0.94524	\$0.94393	\$1.08041

## 2.4. WATER RATES

The City of Gunnison is the water and sewer provider for all the facilities included in the IGA. The meters that are associated with buildings analyzed during this project are on a single rate structure.

The most recent rates dated 1/10/23 are used as the basis for the savings calculations. Refer to Table 5 Water Rate Analysis and Table 6 Sewer Rate Analysis below for calculation of water and sewer rates.

# Base Year Energy Use

Table 5: Water Rate Analysis

Water Rate Analysis						
	1/1/2020	4/10/2020	2/10/2021	1/10/2022	5/10/2022	1/10/2023
	kGal	kGal	kGal	kGal	kGal	kGal
1-5000	\$1.840	\$1.840	\$1.920	\$2.106	\$2.106	\$2.633
5001-10000	\$2.000	\$2.000	\$2.283	\$2.504	\$2.504	\$3.130
10000-15000	\$2.000	\$2.000	\$2.283	\$2.954	\$2.954	\$3.693
over 15001	\$2.050	\$2.050	\$2.283	\$2.954	\$2.954	\$3.693

Table 6: Sewer Rate Analysis

Sewer Rate Analysis						
	1/1/2020	4/10/2020	2/10/2021	1/10/2022	5/10/2022	1/10/2023
Commercial						
gallon	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	\$0.005
kGal	\$3.800	\$3.800	\$4.450	\$4.450	\$4.450	\$4.670

## 2.5. BASE YEAR ANNUAL SUMMARY PER BUILDING

The raw data tables in this section each display three years of energy usage and cost by building and utility type. The intent is to use an ideal sized data set; large enough to normalize seasonal weather fluctuations, but small enough so that historical changes in occupancy or usage patterns wouldn't affect accuracy.

For this project, the base year is determined using the 36-month data for monthly averages of the usage, demand, and costs for each utility when 36-months of data was available. Outliers in the raw data that appear indicative of operating issues, significant weather alterations, etc. may be removed if they appear to be non-typical to ensure the base year data is most accurate and consistent for predicting future energy use and costs. When energy or demand outliers are removed, they will be specifically denoted and addressed and the associated cost for that month will also be adjusted accordingly.

The baseline energy usage for each building is summarized below in Table 7: Base Year Annual Utility Summary. Reference Appendix D for detailed breakdowns of utility usage as well as base year determination for each individual building.



# Base Year Energy Use

Table 7: Base Year Annual Utility Summary

Average Annual Utilities	Acronym	Total Utilities	Electric		Natural Gas		Water&Sewer	
			Use	Cost	Use	Cost	Use	Cost
Facility		\$	kWh	\$	Therms	\$	kgal	\$
Total	Total	\$ 354,738	2,955,310	\$ 220,104	114,440	\$ 103,214	12,350	\$ 31,420
CITY HALL	CIH	\$ 15,253	84,626	\$ 8,078	7,877	\$ 6,877	62	\$ 299
CITY SHOP	CIS	\$ 16,492	68,825	\$ 6,516	11,552	\$ 9,504	92	\$ 472
ELECTRIC SHOP	ELS	\$ 2,935	4,737	\$ 753	1,722	\$ 2,005	9	\$ 178
GARAGE AND FLEET STORAGE (BLUE BARN)	BLU	\$ 6,107	65,312	\$ 6,107				
WATER STORAGE BUILDING	WAT	\$ 4,064	6,208	\$ 911	2,536	\$ 3,153		
JORGENSEN PARK- EVENT CENTER/ INDOOR ICE RINK	INICE	\$ 48,992	346,411	\$ 31,439	18,805	\$ 15,858	676	\$ 1,696
JORGENSEN PARK- OUTDOOR COVERED ICE RINK	OUICE	\$ 965			620	\$ 965		
JORGENSEN PARK- LOCKER ROOM BUILDING	LOC	\$ 1,206	9,815	\$ 1,206				
POLICE DEPARTMENT AND DISPATCH	PDD	\$ 12,026	113,682	\$ 10,601	893	\$ 1,165	52	\$ 259
COMMUNITY CENTER	GCC	\$ 143,057	841,053	\$ 76,441	70,436	\$ 63,687	1,235	\$ 2,929
IOOF PARK - RESTROOM BUILDING	IOOF	\$ 886	2,271	\$ 532			101	\$ 354
LEGION PARK - RESTROOM BUILDING	LEG	\$ 835	3,718	\$ 656			9	\$ 179
MEADOWS PARK - RESTROOM BUILDING	MEA	\$ 4,073	9,706	\$ 1,520			1,057	\$ 2,553
TOMICHI RIVERWAY PARK - RESTROOM BUILDING	TOM	\$ 1,481	2,642	\$ 569			355	\$ 912
CHAR MAR PARK - RESTROOM BUILDING	CHAR	\$ 6,620	1,052	\$ 418			1,748	\$ 6,202
JORGENSEN COMPLEX- FIELD LIGHTING	FIELD	\$ 4,458	46,417	\$ 4,458				
JORGENSEN COMPLEX WATER	JCO	\$ 8,022					3,688	\$ 8,022
WASTEWATER TREATMENT PLANT	WWTP	\$ 70,359	1,348,836	\$ 69,901			147	\$ 458
VAN TUYL RANCH- RENTAL RESIDENCE	VTR	\$ -						
CITY HALL IRR	CIH IRR	\$ 211					28	\$ 211
COMMUNITY CENTER IRR	GCC IRR	\$ 6,504					3,072	\$ 6,504
POLICE DEPARTMENT AND DISPATCH IRR	PDD IRR	\$ 190					19	\$ 190

Figures shown in Table 7: Base Year Annual Utility Summary are based on an average of the past 3 years' data. Refer to Appendix D for additional details.

# Base Year Energy Use

## 2.6. BUILDING PERFORMANCE – ENERGY USE INDEX

Figure 1 shows a breakdown of the annual utility expenses for the City of Gunnison facilities in scope. Electricity accounts for about 63% of the total utility cost, natural gas accounts for about 30% of the total utility cost, and water and sewer account for about 7% of the total utility cost.

Figure 1: Total Utility Cost Breakdown

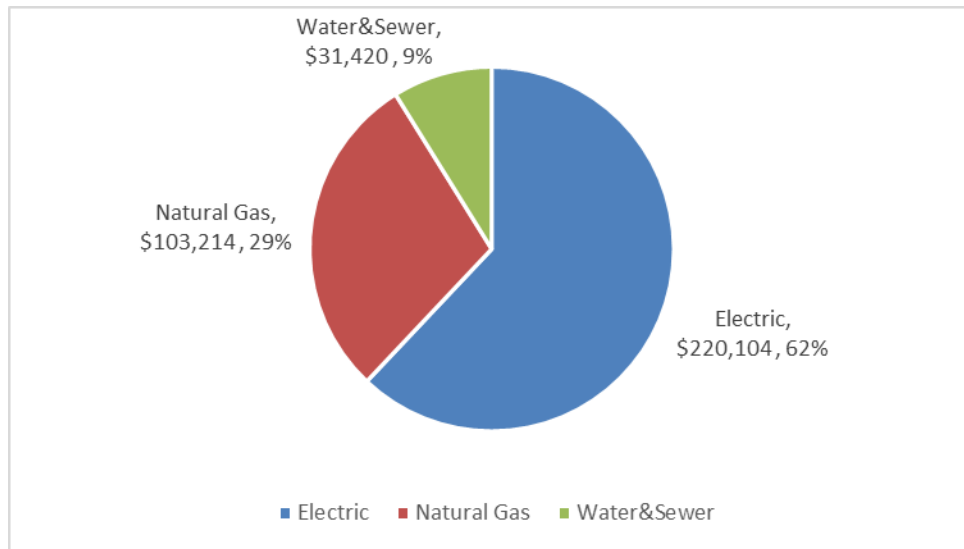


Table 8 shows a summary of the Energy Use Intensity (EUI) for total energy consumed and total energy billed as well as the Energy Cost Index (ECI) for all facilities in scope. The following definitions are important to understand for this annual baseline analysis:

Energy Use Index – total electricity and natural gas consumed per year divided by facility square footage (does not include water and sewer)

Energy Cost Index – total cost of billed electricity and natural gas per year divided by facility square footage (does not include water and sewer)

Utility Cost Index – total cost for all consumed utilities per year divided by facility square footage (includes water and sewer)

Total Energy Cost – total cost of billed electricity and natural gas (does not include water and sewer)

# Base Year Energy Use

Table 8: Building Performance Indices

Building Histories		Energy Use Intensity (EUI)			Energy Cost Index \$/SF
Facility	Area SF	Electric kBtu/SF	Natural Gas kBtu/SF	Total kBtu/SF	
Total	149,768	35.6	76.4	112.0	\$ 2.369
CITY HALL	11,680	24.7	67.4	92.2	\$ 1.306
CITY SHOP	9,491	24.7	121.7	146.5	\$ 1.738
ELECTRIC SHOP	5,022	3.2	34.3	37.5	\$ 0.585
GARAGE AND FLEET STORAGE (BLUE BARN)	7,950	28.0		28.0	\$ 0.768
WATER STORAGE BUILDING	4,500	4.7	56.4	61.1	\$ 0.903
JORGENSEN PARK- EVENT CENTER/ INDOOR ICE RINK	30,900	38.3	60.9	99.1	\$ 1.586
JORGENSEN PARK- OUTDOOR COVERED ICE RINK	20,000		3.1	3.1	\$ 0.048
JORGENSEN PARK- LOCKER ROOM BUILDING	1,250	26.8		26.8	\$ 0.965
POLICE DEPARTMENT AND DISPATCH	6,266	61.9	14.3	76.2	\$ 1.919
COMMUNITY CENTER	49,953	57.5	141.0	198.5	\$ 2.864
IOOF PARK - RESTROOM BUILDING	150	51.7		51.7	\$ 5.905
LEGION PARK - RESTROOM BUILDING	572	22.2		22.2	\$ 1.460
MEADOWS PARK - RESTROOM BUILDING	105	315.5		315.5	\$ 38.795
TOMICHI RIVERWAY PARK - RESTROOM BUILDING	150	60.1		60.1	\$ 9.872
CHAR MAR PARK - RESTROOM BUILDING	105	34.2		34.2	\$ 63.049

# 3

## Facility Descriptions

# Facility Descriptions

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## 3. Facility Descriptions

The following section documents the details for each facility included in the Investment Grade Audit (IGA). Facility descriptions include, but are not limited to facility address, square footage, energy usage, utility costs, hours of operation, HVAC systems, lighting systems, domestic water systems, and building envelope information. Facility hours of operation were determined through Owner provided information as well as interview and observations in the field.

Detailed information on the lighting systems can be found in the following report sections: Appendix A – Lighting Audit.

# Facility Descriptions



## 3.1.CITY HALL (CIH)

City Hall			
		<b>Facility Facts:</b> City Hall	
			
		<b>Energy Use Index (kBtu/ft<sup>2</sup>/yr)</b> 92.2	
		<b>Energy Cost Index (\$/ft<sup>2</sup>/yr)</b> \$1.31	
		<b>Area (ft<sup>2</sup>)</b> 11,680	
		<b>Year Built</b> 1931	
		<b>Number of Occupants</b> 50	
<b>Estimated Number of Personal Computers</b> 20			
<b>Utilities Present</b> Electric, Natural Gas, Water & Sewer			
<b>Total Energy Cost (\$/yr)</b> \$15,253			
<b>Hours of Operation</b>		<b>Facility Use Description</b>	
Monday	8:00 A.M. -5:00 P.M.	The City Hall Building is being used as office space for the City of Gunnison staff. It includes two stories of office space, and a basement.	
Tuesday	8:00 A.M. -5:00 P.M.		
Wednesday	8:00 A.M. -5:00 P.M.		
Thursday	8:00 A.M. -5:00 P.M.	<b>General Facility Notes</b>	
Friday	8:00 A.M. -3:00 P.M.		
Saturday	CLOSED		
Sunday	CLOSED		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Equipment</b>			
<b>System</b>	<b>Equipment Description</b>	<b>Notes</b>	
<b>Cooling:</b>	(1) Rooftop A/C	Cooling Capacity 270 MBH	
	(2) DX Cooling Fan Coil Units		
<b>Heating:</b>	(40) Hot Water Valves		
	(2) Hot Water Boiler	399 MBH input	
	(1) Electric Domestic Hot Water Heater	100% Efficiency	
	(2) Unit Heaters	Serves Basement	
<b>Air Dist:</b>	(1) Rooftop A/C	11000 CFM	
	(2) Heat Recovery Ventilators		
	(22) Variable Air Volume Boxes		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Controls</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
<b>HVAC Controls:</b>	Wall Mounted Thermostats		
<b>Lighting System</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
<b>Fixture Type:</b>	Refer to Appendix A for lighting audit		
<b>Other Facility Information</b>			
<b>Roofing:</b>	TPO Membrane	<b>Windows:</b>	Double Pane Wood
<b>Walls:</b>	Concrete	<b># of Floors:</b>	2 and Basement
<b>Water Fixtures:</b>	Toilets, Faucets, and Irrigation	<b>Irrigation:</b>	Yes
<b>Other:</b>		<b>Other:</b>	





# Facility Descriptions

## 3.2.CITY SHOP (CIS)

City Shop			
		<b>Facility Facts:</b> City Shop	
			
		<b>Energy Use Index (kBtu/ft<sup>2</sup>/yr)</b> 146.5	
		<b>Energy Cost Index (\$/ft<sup>2</sup>/yr)</b> \$1.74	
		<b>Area (ft<sup>2</sup>)</b> 9,491	
		<b>Year Built</b> 1992	
		<b>Number of Occupants</b> 25	
<b>Estimated Number of Personal Computers</b> 15			
<b>Utilities Present</b> Electric, Natural Gas, Water & Sewer			
<b>Total Energy Cost (\$/yr)</b> \$16,492			
<b>Hours of Operation</b>		<b>Facility Use Description</b>	
Monday	8:00 A.M. -5:00 P.M.	The City Shop is used as office space for City of Gunnison Staff and a repair garage for City of Gunnison Equipment. The building is single story and consists of office space, a parts area and two garages.	
Tuesday	8:00 A.M. -5:00 P.M.		
Wednesday	8:00 A.M. -5:00 P.M.		
Thursday	8:00 A.M. -5:00 P.M.		
Friday	8:00 A.M. -3:00 P.M.		
Saturday	CLOSED		
Sunday	CLOSED		
		<b>General Facility Notes</b>	
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Equipment</b>			
<b>System</b>	<b>Equipment Description</b>	<b>Notes</b>	
<b>Cooling:</b>	(1) Condensing Unit	Serving the Office	
<b>Heating:</b>	(1) Gas Fired Furnaces	225 MBH input	
	(3) Gas Fired Unit Heaters	50 MBH input	
	(1) Electric Domestic Hot Water Heater	100% Efficiency	
	(1) Make Up Air Unit	600 MBH input	
	(2) Unit Heaters	Serving the Wash Bay	
<b>Air Dist:</b>	(1) Make Up Air Unit	5000 CFM	
	(1) Gas Fired Furnaces	2000 CFM	
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Controls</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
<b>HVAC Controls:</b>	Wall Mounted Thermostats		
<b>Lighting System</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
<b>Fixture Type:</b>	Refer to Appendix A for lighting audit		
<b>Other Facility Information</b>			
<b>Roofing:</b>	Metal Pro-Panel	<b>Windows:</b>	Metal clad
<b>Walls:</b>	Metal Pro-Panel	<b># of Floors:</b>	1
<b>Water Fixtures:</b>	Toilets, Faucets, and Shower	<b>Irrigation:</b>	N/A
<b>Other:</b>	Three overhead garage doors	<b>Other:</b>	



# Facility Descriptions

## 3.3. ELECTRIC SHOP (ELS)

Electric Shop			
		<b>Facility Facts:</b> Electric Shop	
			
		<b>Energy Use Index (kBtu/ft<sup>2</sup>/yr)</b> 37.5	
		<b>Energy Cost Index (\$/ft<sup>2</sup>/yr)</b> \$0.58	
		<b>Area (ft<sup>2</sup>)</b> 5,022	
		<b>Year Built</b> 1987	
		<b>Number of Occupants</b> 3	
<b>Estimated Number of Personal Computers</b> 0			
<b>Utilities Present</b> Electric, Natural Gas, Water & Sewer			
<b>Total Energy Cost (\$/yr)</b> \$2,935			
<b>Hours of Operation</b>			
Monday	8:00 A.M. -5:00 P.M.		<b>Facility Use Description</b> The Electric Shop used as storage space for the City of Gunnison equipment. The Building is single story and consists of Garage space and a single office.
Tuesday	8:00 A.M. -5:00 P.M.		
Wednesday	8:00 A.M. -5:00 P.M.		
Thursday	8:00 A.M. -5:00 P.M.		
Friday	8:00 A.M. -3:00 P.M.		
Saturday	CLOSED		
Sunday	CLOSED		
<b>General Facility Notes</b>			
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Equipment</b>			
<b>System</b>	<b>Equipment Description</b>	<b>Notes</b>	
Cooling:	N/A		
Heating:	(2) Reznor Gas Unit Heaters		
Air Dist:	(1) Exhaust Fan		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Controls</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
HVAC Controls:	Stand Alone Thermostats		
<b>Lighting System</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
Fixture Type:	Refer to Appendix A for lighting audit		
<b>Other Facility Information</b>			
Roofing:	Metal Pro-Panel	Windows:	N/A
Walls:	Metal Pro-Panel	# of Floors:	1
Water Fixtures:	N/A	Irrigation:	N/A
Other:	Five overhead garage doors	Other:	



# Facility Descriptions

## 3.4.GARAGE AND FLEET STORAGE- BLUE BARN (BLU)

Garage and Fleet Storage (Blue Barn)			
		<b>Facility Facts:</b> Garage and Fleet Storage (Blue Barn)	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)	28.0
		Energy Cost Index (\$/ft <sup>2</sup> /yr)	\$0.77
		Area (ft <sup>2</sup> )	7,950
		Year Built	1978
		Number of Occupants	-
Estimated Number of Personal Computers		0	
Utilities Present		Electric	
Total Energy Cost (\$/yr)		\$6,107	
Hours of Operation		Facility Use Description	
Monday	8:00 A.M. -5:00 P.M.	The Blue Barn is used as a storage facility for the City of Gunnison Equipment.	
Tuesday	8:00 A.M. -5:00 P.M.		
Wednesday	8:00 A.M. -5:00 P.M.		
Thursday	8:00 A.M. -5:00 P.M.	General Facility Notes	
Friday	8:00 A.M. -3:00 P.M.		
Saturday	CLOSED		
Sunday	CLOSED		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(1) Waste Oil Heater		
	(4) Electric Unit Heaters		
Air Dist:	(4) Ceiling Fans		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	Stand Alone Thermostats		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Pro-Panel	Windows:	N/A
Walls:	Metal Pro-Panel	# of Floors:	1
Water Fixtures:	N/A	Irrigation:	N/A
Other:	Four overhead garage doors	Other:	



# Facility Descriptions

## 3.5. JORGENSEN PARK- EVENT CENTER INDOOR ARENA (INICE)

Jorgensen Park- Event Center/ Indoor Ice Arena			
		<b>Facility Facts:</b> Jorgensen Park- Event Center/ Indoor Ice 	
		<b>Energy Use Index (kBtu/ft² /yr)</b> 99.1	
		<b>Energy Cost Index (\$/ft² /yr)</b> \$1.59	
		<b>Area (ft²)</b> 30,900	
		<b>Year Built</b> 2008	
		<b>Number of Occupants</b> Weekdays: 200 Weekends: 600	
		<b>Estimated Number of Personal Computers</b> 2	
		<b>Utilities Present</b> Electric, Natural Gas, Water & Sewer	
		<b>Total Energy Cost (\$/yr)</b> \$48,992	
Hours of Operation		Facility Use Description	
Monday	10:30 A.M. -10:30 P.M.	The Indoor Rink is a single story building. It consists of an Ice Arena, a Kitchen snack area, locker rooms, restrooms, and office space.	
Tuesday	12:00 P.M. -10:30 P.M.		
Wednesday	10:30 A.M. -10:30 P.M.		
Thursday	12:00 P.M. -10:30 P.M.		
Friday	10:30 A.M. -10:30 P.M.	General Facility Notes	
Saturday	8:00 A.M. -10:00 P.M.	The Indoor Rink is open from the last Saturday in September through the third Sunday in March. The Building is open year round.	
Sunday	8:00 A.M. -10:00 P.M.		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	(1) Ice Machine	1200 MBH Refrigeration Capacity	
Heating:	(1) Ice Rink Gas Fired Make Up Air Unit	1250 MBH Serves Ice Rink	
	(1) Lobby Gas Fired Make Up Air Unit	189 MBH Serves Lobby	
	(5) Infra-Red Tube Heaters	Serves spectator area	
	(2) Electric Unit Heaters		
	(7) Tankless Water Heater	199 MBH input , 84% Efficiency	
	(2) Hot Water Boilers	250 MBH input, 90% Efficiency, Serves Snowmelt and Radiant Floor	
	(1) Electric Water Heater	100% Efficiency	
Air Dist:	(1) Ice Rink Gas Fired Make Up Air Unit	15432 CFM	
	(1) Lobby Gas Fired Make Up Air Unit	2300 CFM	
	(2) Exhaust Fans		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	Stand alone thermostats		
	Carbon Monoxide Controls for Ice Arena		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Standing Seem	Windows:	Double Pane Aluminum
Walls:	Metal Siding	# of Floors:	1
Water Fixtures:	Toilets, Faucets, Shower, and Drinking Fountains	Irrigation:	N/A
Other:		Other:	

# Facility Descriptions



## 3.6. JORGENSEN PARK- OUTDOOR COVERED ICE RINK (OUICE)

Jorgensen Park- Outdoor Covered Ice Rink			
		<b>Facility Facts:</b> Jorgensen Park- Outdoor Covered Ice Rink	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)	3.1
		Energy Cost Index (\$/ft <sup>2</sup> /yr)	\$0.05
		Area (ft <sup>2</sup> )	20,000
		Year Built	1997
		Number of Occupants	100
Estimated Number of Personal Computers		0	
Utilities Present		Building is on its own Natural Gas meter, Shares Electric and Water & Sewer with Event Center/ Indoor Ice Arena	
Total Energy Cost (\$/yr)		\$965	
Hours of Operation		Facility Use Description	
Monday	10:30 A.M. -10:30 P.M.	The Outdoor Rink is a single story facility, it is a single ice rink with a metal covering.	
Tuesday	12:00 P.M. -10:30 P.M.		
Wednesday	10:30 A.M. -10:30 P.M.		
Thursday	12:00 P.M. -10:30 P.M.	<b>General Facility Notes</b> The Outdoor Rink and Pond are open around the 3rd week in December until March, weather permitting.	
Friday	10:30 A.M. -10:30 P.M.		
Saturday	8:00 A.M. -10:00 P.M.		
Sunday	8:00 A.M. -10:00 P.M.		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(4) Radiant Heaters		
Air Dist:	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Standing Seem	Windows:	N/A
Walls:	N/A	# of Floors:	1
Water Fixtures:	N/A	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions



## 3.7.JORGENSEN PARK- LOCKER ROOM BUILDING (LOC)

Jorgensen Park- Locker Room Building			
		<b>Facility Facts:</b> Jorgensen Park- Locker Room Building	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)	26.8
		Energy Cost Index (\$/ft <sup>2</sup> /yr)	\$0.97
		Area (ft <sup>2</sup> )	1,250
		Year Built	1970
		Number of Occupants	10
Estimated Number of Personal Computers		0	
Utilities Present		Building is on its own Electric meter, Shares Water and Sewer with Event Center/ Indoor Ice Arena	
Total Energy Cost (\$/yr)		\$1,206	
Hours of Operation		Facility Use Description	
Monday	10:30 A.M. -10:30 P.M.	The Locker Room building is a single story building that consists of locker rooms.	
Tuesday	12:00 P.M. -10:30 P.M.		
Wednesday	10:30 A.M. -10:30 P.M.		
Thursday	12:00 P.M. -10:30 P.M.	General Facility Notes	
Friday	10:30 A.M. -10:30 P.M.		
Saturday	8:00 A.M. -10:00 P.M.		
Sunday	8:00 A.M. -10:00 P.M.		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(5) Electric Unit Heaters		
	(2) Electric Domestic Hot Water Heaters	100% Efficiency	
Air Dist:	(1) Exhaust Fan		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Pro-Panel	Windows:	N/A
Walls:	Log	# of Floors:	1
Water Fixtures:	Toilet, Faucet, Shower, and Drinking Fountain	Irrigation:	N/A
Other:	Roof Mounted Solar Photovoltaics	Other:	




# Facility Descriptions

## 3.8. JORGENSEN COMPLEX (JCO)

Jorgensen Complex			
	<b>Facility Facts:</b> Jorgensen Complex		
	Energy Use Index (kBtu/ft²/yr)		0.0
	Energy Cost Index (\$/ft²/yr)		\$0.00
	Area (ft²)		0
	Year Built		Restroom Building 2018
	Number of Occupants		-
	Estimated Number of Personal Computers		0
	Utilities Present		Electric, Water & Sewer
Total Energy Cost (\$/yr)		\$12,480	
Hours of Operation		Facility Use Description	
Monday	10:30 A.M. -10:30 P.M.	The Jorgensen Complex consists of softball fields, a pond, a skate park, a soccer field, and restroom building.	
Tuesday	12:00 P.M. -10:30 P.M.		
Wednesday	10:30 A.M. -10:30 P.M.		
Thursday	12:00 P.M. -10:30 P.M.		
Friday	10:30 A.M. -10:30 P.M.	General Facility Notes	
Saturday	8:00 A.M. -10:00 P.M.		
Sunday	8:00 A.M. -10:00 P.M.		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	N/A		
Air Dist:	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	N/A		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	N/A	Windows:	N/A
Walls:	N/A	# of Floors:	N/A
Water Fixtures:	Irrigation, Toilet, and Faucet	Irrigation:	Yes
Other:		Other:	



# Facility Descriptions

## 3.9. WASTEWATER TREATMENT PLANT (WWTP)

Wastewater Treatment Plant			
	<b>Facility Facts:</b> Wastewater Treatment Plant		
	Energy Use Index (kBtu/ft²/yr)		N/A
	Energy Cost Index (\$/ft²/yr)		N/A
	Area (Acres)		26
	Year Built		2021
	Number of Occupants		5
	Estimated Number of Personal Computers		5
	Utilities Present		Electric, Water & Sewer
Total Energy Cost (\$/yr)		\$70,359	
Hours of Operation		Facility Use Description	
Monday	8:00 A.M. -5:00 P.M.	Facility consists of nine structural buildings. These facilities are used for storage, equipment, and as office space. It provides the waste water treatment for the City and parts of the County.	
Tuesday	8:00 A.M. -5:00 P.M.		
Wednesday	8:00 A.M. -5:00 P.M.		
Thursday	8:00 A.M. -5:00 P.M.	<b>General Facility Notes</b> Originally constructed in 1987 and renovation completed in 2022. The plant processes 265,000 gals of wastewater per day on average with a winter peak of 0.6 MGD and a summer peak of 2.5 MGD. Major plant equipment consists of pre-treatment bldg, 3 oxidation ditches, 2 clarifiers, de-watering bldg, RAS/WAS pump gallery, gravity thickener and UV treatment. Plant controlled by SCADA system.	
Friday	8:00 A.M. -3:00 P.M.		
Saturday	CLOSED		
Sunday	CLOSED		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	(3) Geothermal Heat Pumps		
Heating:	(3) Geothermal Heat Pumps		
	(1) Duct Heater		
	(1) Packaged Terminal Heat Pump		
	Unitary Electric Heaters	Throughout Buildings	
Air Dist:	(3) Geothermal Heat Pumps		
	(1) Packaged Terminal Heat Pump		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	Geothermal Heat Pumps are controlled with DDC Controls		
	Unitary Electric Heaters are controlled with stand alone thermostats		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Standing Seem Metal Roof	Windows:	3/8" Laminated Glass
Walls:	Metal Panel and Concrete	# of Floors:	1
Water Fixtures:	Toilet, and Faucets	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions

## 3.10. VAN TUYL RANCH- RENTAL RESIDENCE (VTR)

Van Tuyl Ranch- Rental Residence			
		<b>Facility Facts:</b> Van Tuyl Ranch- Rental Residence	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)0.0	
		Energy Cost Index (\$/ft <sup>2</sup> /yr)\$0.00	
		Area (ft <sup>2</sup> )1,674	
		Year Built1982	
		Number of Occupants-	
Estimated Number of Personal Computers1			
Utilities PresentElectric, Water & Sewer			
Total Energy Cost (\$/yr)\$0			
Hours of Operation		Facility Use Description	
Monday	N/A	Private home leased by the Van Tuyl Ranch caretaker.	
Tuesday	N/A		
Wednesday	N/A		
Thursday	N/A		
Friday	N/A	General Facility Notes	
Saturday	N/A		
Sunday	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(1) Woodstove		
	(1) Gas Fired Domestic Water Heater	80% Efficiency	
Air Dist:	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Pro-Panel	Windows:	Wood
Walls:	Wood	# of Floors:	1
Water Fixtures:	Toilet, Faucet, and Shower	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions

## 3.11. POLICE DEPARTMENT AND DISPATCH (PDD)

Police Department and Dispatch			
	<b>Facility Facts:</b> Police Department and Dispatch		
	Energy Use Index (kBtu/ft²/yr)		76.2
	Energy Cost Index (\$/ft²/yr)		\$1.92
	Area (ft²)		6,266
	Year Built		2014
	Number of Occupants		20
	Estimated Number of Personal Computers		20
	Utilities Present		Electric, Natural Gas, Water & Sewer
	Total Energy Cost (\$/yr)		\$12,026
Hours of Operation		Facility Use Description	
Monday	24/7	This building consists of two spaces, a Police Dispatch station with offices spaces, and the Police Department with Office space.	
Tuesday	24/7		
Wednesday	24/7		
Thursday	24/7		
Friday	24/7	General Facility Notes	
Saturday	24/7	The Police Department and Dispatch Building is Open 24/7.	
Sunday	24/7		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	(1) AHU DX Cooling/ Hot Water	148 MBH	
	(1) Split System A/C Unit	36 MBH	
	(1) Condensing Unit	180 MBH	
Heating:	(1) AHU DX Cooling/ Hot Water	242.9 MBH output	
	(2) Condensing Water Boiler	80% Efficiency, 245 input	
	(1) Electric Hot Water Heater	100% Efficiency	
	(1) Hot Water CUH		
	(1) Hot Water UH		
Air Dist:	(1) AHU DX Cooling/ Hot Water	7000 CFM	
	(11) Variable Air Volume Terminals		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	Distech Building Automation System		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Pro-Panel	Windows:	Double-pane Vinyl
Walls:	Wood Framed	# of Floors:	1
Water Fixtures:	Toilets, Faucets, and Irrigation	Irrigation:	Yes
Other:		Other:	

# Facility Descriptions



## 3.12. GUNNISON COMMUNITY CENTER (GCC)

Gunnison Community Center			
	<b>Facility Facts:</b> Gunnison Community Center		
	Energy Use Index (kBtu/ft²/yr)		198.5
	Energy Cost Index (\$/ft²/yr)		\$2.86
	Area (ft²)		49,953
	Year Built		2004
	Number of Occupants		Summer: 500 Winter: 150
	Estimated Number of Personal Computers		20
	Utilities Present		Electric, Natural Gas, Water & Sewer
Total Energy Cost (\$/yr)		\$143,057	
Hours of Operation		Facility Use Description	
Monday	6:00 A.M. -8:00 P.M.	Gunnison Community Center consists of office space, two indoor pools, two large gyms, a kitchen and senior meeting center.	
Tuesday	6:00 A.M. -8:00 P.M.		
Wednesday	6:00 A.M. -8:00 P.M.		
Thursday	6:00 A.M. -8:00 P.M.	General Facility Notes	
Friday	6:00 A.M. -8:00 P.M.		
Saturday	10:00 A.M. -8:00 P.M.		
Sunday	12:00 P.M. -6:00 P.M.		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	(1) Heat Recovery MUA	68.5 MBH	
	(2) Ductless Split System A/C		
Heating:	(1) Dehumidification/ Heat Recovery Unit	1600 MBH input	
	(1) Heat Recovery MUA	400 MBH input	
	(2) Gas Fired MUAs	225 MBH input and 390 MBH input	
	(3) Gas Fired AHUs	1300 MBH input, 400 MBH input, 200 MBH input	
	(1) Gas Fired Unit Heater		
	(3) Electric Unit Heaters		
	(1) Gas Domestic Hot Water Heater	80% Efficiency	
	(2) Pool Heaters	990 MBH input and 1800 MBH input, 89% Efficiency	
	(6) Pool Pumps	3 HP, (2) 10 HP, (2) 20 HP , 25 HP	
	(1) Boiler		
Air Dist:	(1) Dehumidification/ Heat Recovery Unit	19000 CFM	
	(1) Heat Recovery MUA	3600 CFM	
	(2) Gas Fired MUAs	1500 CFM and 3200 CFM	
	(1) Kitchen Exhaust Fan		
	(3) Gas Fired AHUs	24000 CFM, 7050 CFM, and 2300 CFM	
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	Stand Alone Programmable Thermostats		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Standing seam galvalume roofing	Windows:	Double Pane Aluminum
Walls:	Metal siding	# of Floors:	1
Water Fixtures:	Toilets, Faucets, Shower, and Irrigation	Irrigation:	Yes
Other:	Solar Thermal System to heat pool	Other:	





# Facility Descriptions

## 3.13. IOOF PARK- RESTROOM BUILDING (IOOF)

IOOF Park- Restroom Building			
		<b>Facility Facts:</b> IOOF Park- Restroom Building	
			
		Energy Use Index (kBtu/ft2/yr)	51.7
		Energy Cost Index (\$/ft2/yr)	\$5.90
		Area (ft2)	150
		Year Built	2007
		Number of Occupants	10
		Estimated Number of Personal Computers	0
		Utilities Present	Electric, Water & Sewer
		Total Energy Cost (\$/yr)	\$886
Typical Restroom Photo			
Hours of Operation		Facility Use Description	
Monday	24/7	Restroom Buildings are only open for Public Use in the Summer	
Tuesday	24/7		
Wednesday	24/7		
Thursday	24/7		
Friday	24/7		
Saturday	24/7		
Sunday	24/7		
		General Facility Notes	
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(1) Electric Unit Heater		
Air Dist:	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Shingle Roof	Windows:	N/A
Walls:	Wood Framed	# of Floors:	1
Water Fixtures:	Toilet and Faucet	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions

## 3.14. LEGION PARK- RESTROOM BUILDING (LEG)

Legion Park -Restroom Building			
		<b>Facility Facts:</b> Legion Park -Restroom Building	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)	22.2
		Energy Cost Index (\$/ft <sup>2</sup> /yr)	\$1.46
		Area (ft <sup>2</sup> )	572
		Year Built	2017
		Number of Occupants	10
		Estimated Number of Personal Computers	0
		Utilities Present	Electric, Water & Sewer
		Total Energy Cost (\$/yr)	\$835
Typical Restroom Photo			
Hours of Operation		Facility Use Description	
Monday	24/7	Restroom Buildings are only open for Public Use in the Summer	
Tuesday	24/7		
Wednesday	24/7		
Thursday	24/7		
Friday	24/7	General Facility Notes	
Saturday	24/7		
Sunday	24/7		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(1) Electric Unit Heater		
Air Dist:	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Shingle Roof	Windows:	N/A
Walls:	Wood Framed	# of Floors:	1
Water Fixtures:	Toilet and Faucet	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions

## 3.15. MEADOWS PARK- RESTROOM BUILDING (MEA)

Meadows Park -Restroom Building			
		<b>Facility Facts:</b> Meadows Park -Restroom Building	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)	315.5
		Energy Cost Index (\$/ft <sup>2</sup> /yr)	\$38.79
		Area (ft <sup>2</sup> )	105
		Year Built	2002
		Number of Occupants	10
		Estimated Number of Personal Computers	0
		Utilities Present	Electric, Water & Sewer
Typical Restroom Photo		Total Energy Cost (\$/yr)	\$4,073
Hours of Operation		Facility Use Description	
Monday	24/7	Restroom Buildings are only open for Public Use in the Summer	
Tuesday	24/7		
Wednesday	24/7		
Thursday	24/7		
Friday	24/7		
Saturday	24/7	General Facility Notes	
Sunday	24/7		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(1) Electric Unit Heater		
Air Dist:	N/A		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Shingle Roof	Windows:	N/A
Walls:	Wood Framed	# of Floors:	1
Water Fixtures:	Toilet and Faucet	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions

## 3.16. TOMICHI RIVERWAY PARK- RESTROOM BUILDING (TOM)

Tomichi Riverway Park -Restroom Building			
	<b>Facility Facts:</b> Tomichi Riverway Park -Restroom Building		
	Energy Use Index (kBtu/ft²/yr)		60.1
	Energy Cost Index (\$/ft²/yr)		\$9.87
	Area (ft²)		150
	Year Built		2004
	Number of Occupants		10
	Estimated Number of Personal Computers		0
	Utilities Present		Electric, Water & Sewer
Total Energy Cost (\$/yr)		\$1,481	
<b>Hours of Operation</b>		<b>Facility Use Description</b>	
Monday	24/7	Restroom Buildings are only open for Public Use in the Summer	
Tuesday	24/7		
Wednesday	24/7		
Thursday	24/7		
Friday	24/7	<b>General Facility Notes</b>	
Saturday	24/7		
Sunday	24/7		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Equipment</b>			
<b>System</b>	<b>Equipment Description</b>	<b>Notes</b>	
Cooling:	N/A		
Heating:	(1) Electric Unit Heater		
Air Dist:	N/A		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Controls</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
HVAC Controls:	(1) Thermostat		
<b>Lighting System</b>			
<b>Item</b>	<b>Equipment Description</b>	<b>Notes</b>	
Fixture Type:	Refer to Appendix A for lighting audit		
<b>Other Facility Information</b>			
Roofing:	Shingle Roof	Windows:	N/A
Walls:	Wood Framed	# of Floors:	1
Water Fixtures:	Toilet and Faucet	Irrigation:	N/A
Other:		Other:	

# Facility Descriptions



## 3.17. CHAR MAR PARK- RESTROOM BUILDING (CHAR)

Char Mar Park Restroom Building			
		<b>Facility Facts:</b> Char Mar Park -Restroom Building	
			
		Energy Use Index (kBtu/ft²/yr)	34.2
		Energy Cost Index (\$/ft²/yr)	\$63.05
		Area (ft²)	105
		Year Built	2003
		Number of Occupants	10
		Estimated Number of Personal Computers	0
Utilities Present		Electric, Water & Sewer	
Total Energy Cost (\$/yr)		\$6,620	
<b>Hours of Operation</b>		<b>Facility Use Description</b>	
Monday	24/7	Restroom Buildings are only open for Public Use in the Summer	
Tuesday	24/7		
Wednesday	24/7		
Thursday	24/7		
Friday	24/7	<b>General Facility Notes</b>	
Saturday	24/7		
Sunday	24/7		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Equipment</b>			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(1) Electric Unit Heater		
Air Dist:	N/A		
<b>Heating, Ventilation &amp; Air Conditioning (HVAC) Controls</b>			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
<b>Lighting System</b>			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
<b>Other Facility Information</b>			
Roofing:	Shingle Roof	Windows:	N/A
Walls:	Wood Framed	# of Floors:	1
Water Fixtures:	Toilet and Faucet	Irrigation:	N/A
Other:		Other:	



# Facility Descriptions

## 3.18. WATER STORAGE BUILDING (WAT)

Water Storage Building			
		<b>Facility Facts:</b> Water Storage Building	
			
		Energy Use Index (kBtu/ft <sup>2</sup> /yr)61.1	
		Energy Cost Index (\$/ft <sup>2</sup> /yr)\$0.90	
		Area (ft <sup>2</sup> )4,500	
		Year Built2007	
		Number of Occupants-	
Estimated Number of Personal Computers1			
Utilities PresentElectric, Natural Gas			
Total Energy Cost (\$/yr)\$4,064			
Hours of Operation		Facility Use Description	
Monday	8:00 A.M. -5:00 P.M.	Building is used as a storage site.	
Tuesday	8:00 A.M. -5:00 P.M.		
Wednesday	8:00 A.M. -5:00 P.M.		
Thursday	8:00 A.M. -5:00 P.M.		
Friday	8:00 A.M. -3:00 P.M.	General Facility Notes	
Saturday	CLOSED		
Sunday	CLOSED		
Heating, Ventilation & Air Conditioning (HVAC) Equipment			
System	Equipment Description	Notes	
Cooling:	N/A		
Heating:	(2) Gas-Fired Heaters		
	(1) Electric baseboard heater		
Air Dist:	(1) Propeller Fan		
Heating, Ventilation & Air Conditioning (HVAC) Controls			
Item	Equipment Description	Notes	
HVAC Controls:	(1) Thermostat		
Lighting System			
Item	Equipment Description	Notes	
Fixture Type:	Refer to Appendix A for lighting audit		
Other Facility Information			
Roofing:	Metal Pro-Panel	Windows:	N/A
Walls:	Metal Pro-Panel	# of Floors:	1
Water Fixtures:	Toilet and Faucet	Irrigation:	N/A
Other:	Three overhead garage doors	Other:	

# 4 ECM Descriptions

# Energy Conservation Measures

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## 4. Energy Conservation Measures

This section describes the Energy Conservation Measures (ECMs) identified through the site audit, utility analysis and staff interview process. The tables in this section list the recommended ECMs including a brief description, construction costs, energy and maintenance savings, CO2 savings, utility rebates, grants and the simple payback for each measure.

The Energy Conservation Measures Descriptions document the existing conditions, proposed ECM description, savings calculation methodology, measurement and verification plan, training plan, commissioning plan and warranty for each measure.

# Energy Conservation Measures

## 4.1. ENERGY CONSERVATION MEASURE MATRIX, SUMMARY, COST BREAKDOWN AND CASH FLOW

Table 9: Energy Conservation Measure Matrix

Energy Conservation Measure (ECM)	ECM Description	Potential Grant / Funding Sources**	City of Gunnison Priority (1-3)	City Hall	City Shop	Electric Shop	Garage and Fleet Storage (Blue Barn)	Water Department Shop	Storage Building	Indoor Ice Arena	Ice Arena Locker Room	Outdoor Ice Rink	Jorgensen Park Fields	Police Department	Community Center	Wastewater Treatment Plant Building	Jorgensen Park - Parks Building	IOOF Park - Restroom	Legion Park - Restroom	Meadows Park - Restroom	Char Mar Park - Restroom	Tomichi Park - Restroom
LED Lighting Upgrades	Replace existing non-LED lamps/ fixtures with new LED lamps/ fixtures to reduce energy and maintenance costs. New exterior fixtures will be dark sky compliant. Stand-alone occupancy and daylight harvesting controls will be utilized where advantageous. Includes replacement of occupancy sensors in Ice Arena restroom.	n/a	1	X	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X
Sports Field Lighting	Replace existing non-LED Softball field lighting with new dark-sky compliant LED field lighting and raise light levels to IES recommendations. Pole replacement not required. Includes alternate to add new pole and dedicated fixtures to ice-skating pond. Excludes soccer field lighting.	City Capital	1									X										
Night Setback for Ice Machine	Turn off ice-making machine at night to reduce energy use.	n/a	TBD						X													
Solar Photovoltaics Systems	Roof-mounted solar photovoltaic systems, 150 kW DC total.	DOLA & IRA	1		X				X				X	X	X							
EV Charging Station-Level 2	Install level-2 electric vehicle charging station at Community Center.	DOLA & Charge Ahead Colorado	2											X								
New Back-up Generators	Furnish and install two new generators (one for Original section electrical service and one for Pool Addition electrical service).	DOLA & DHSEM	1											X								
Building Automation System (BAS)	Install central BAS controls on HVAC systems and implement modern control strategies with best-in-class control sequences.	DOLA	1											X								
Air Sealing and Weather Stripping	Add weather-stripping, door seals and spray foam to better seal building envelope, reduce infiltration, reduce energy use and improve occupant comfort. This includes man doors as well as over-head vehicle doors. Includes adjusting/repairing north facing doors at Police Department.	n/a	1	X	X	X	X		X	X			X	X	X	X						
Alternative Pool Water Treatment	Replace existing pool water treatment system with new treatment system that utilizes on-site sodium hypochlorite (chlorine) generation via electrochemical reaction between salt and water. Greatly reduces the need to store, handle and mix concentrated hazardous pool chemicals.	n/a	TBD											X								
Retro-Commissioning & TAB	Improve operation and efficiency of existing HVAC equipment and systems. Includes Test at Balance (TAB) and allowance for ductwork repair.	n/a	1	X																		
Re-commissioning	Work with staff to re-commission the water treatment plant systems. Verify that the water treatment systems are operating per the original control narratives. Where current sequences deviate from original design, McKinstry will document these differences and work with the staff to determine the correct course of action.	n/a	1												X							
Assessment of Solar Thermal Panels	Conduct a detailed condition assessment of the existing solar thermal system to determine the condition of the panels, piping, pumps, storage tanks, etc. Included in the assessment will be a condition rating, age of system, remaining life and replacement cost.	n/a	1											X								
Replace Make-up Air Unit	Replace problematic make-up air unit that serves the rink area at the Ice Arena.	n/a	1						X													
Replace Radiant Infrared Heaters	Replace radiant infrared heaters in the space with burners and flue vents that are designed to prevent condensation from forming that could drip on spectators.	n/a	1						X													
Replace Standing Pilot Unit Heater	The standing pilot unit heater serving the Parts Area is an outdated technology that has reached its ASHRAE life expectancy. Replace heater with new gas-fired electronic ignition unit heater.	n/a	1		X																	
Expand Snow-melt System	Add snowmelt system at entrance of outdoor rink and entrance of Zamboni building. New boiler, pump and controls to be installed in Zamboni building.	n/a	1								X											
Address Ice Melt Humidity Issues from Zamboni	The humidity associated with melting the Zamboni ice shavings is creating condensation that is corroding the metal structure of the Zamboni building. This measures consists of installing a humidistat controlled exhaust fan and larger unit heater to reduce the humidity levels of this building.	n/a	1						X													
Add Heating/ Cooling System for Expansion	The City Shop is remodeling the water shop into office area and as result the existing HVAC system is not properly sized to serve this area. Included is a new furnace split system, mods to existing ductwork, new ductwork for remodeled area and a zoning control system.	n/a	1		X																	
<b>Notes:</b> ** Grants & Funding Sources: Department of Local Affairs EIAF Tier II grant ("DOLA"), Department of Homeland Security-Emergency Management ("DHSEM"), Charge Ahead Colorado and Inflation Reduction Act "IRA". 1=Keep in project, 2=Mid-level Priority, 3=Low Priority <b>Confidential and Proprietary</b>																						
												<div>x</div> Included in project										

# Energy Conservation Measures

Table 10: Energy Conservation Measure Summary

ECM Name	Construction Cost *	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Rebates/Grants/ IRA Direct Payment **	Non-Guaranteed Net Customer Cost (with Incentives)
01.02 Replace Radiant Infrared Heaters Total	\$76,043	\$100	1	\$350	\$450	\$0	\$76,043
01.03 Replace Standing Pilot Heaters Total	\$10,919	\$117	1	\$0	\$117	\$0	\$10,919
01.05 Expand Snow Melt System Total	\$109,175	(\$1,064)	-6	\$0	-\$1,064	\$0	\$109,175
01.06 Add HVAC System w-Zone Controls and Duct Mods Total	\$95,610	\$329	-1	\$0	\$329	\$0	\$95,610
03.02 Replace Make Up Air Unit Total	\$212,811	\$3,237	18	\$0	\$3,237	\$0	\$212,811
04.01 Building Automation System Total	\$399,772	\$21,568	113	\$0	\$21,568	\$0	\$399,772
04.05 Night Setback for Ice Machine Total	\$0	\$3,786	28	\$0	\$3,786	\$0	\$0
05.01 Retro-Commissioning and TAB Total	\$33,950	\$0	0	\$0	\$0	\$0	\$33,950
05.02 Recommissioning Total	\$46,215	\$0	0	\$0	\$0	\$0	\$46,215
06.01 Address Ice Melt Humidity Issues from Zamboni Total	\$38,470	\$0	0	\$0	\$0	\$0	\$38,470
09.01 LED Lighting Upgrades Total	\$323,794	\$12,305	90	\$2,742	\$15,047	\$2,362	\$321,432
09.02 Ballpark Lighting Total	\$453,132	\$3,733	27	\$212	\$3,945	\$0	\$453,132
09.04 Pond LED Lighting Upgrades Total	\$33,000	\$18	0	\$0	\$18	\$0	\$33,000
10.01 Solar PV Total	\$722,188	\$21,407	156	\$0	\$21,407	\$232,003	\$490,185
10.03 Assessment of Solar Panels Total	\$6,000	\$0	0	\$0	\$0	\$0	\$6,000
11.02 New Generators Total	\$835,629	\$0	0	\$0	\$0	\$84,000	\$751,629
13.01 Air Sealing and Weather Stripping Total	\$169,506	\$11,841	71	\$0	\$11,841	\$0	\$169,506
17.01 Pool Water Treatment Total	\$388,730	\$4,950	1	\$16,427	\$21,377	\$0	\$388,730
21.01 EV Charging Station- Level 2 Total	\$42,476	(\$433)	-3	\$0	-\$433	\$6,000	\$36,476
Grand Total	\$3,997,420	\$81,894	495	\$19,731	\$101,625	\$324,365	\$3,673,055

**Total Less \$750k DOLA Grant \$2,923,534**  
**Total Less \$914k Capital from Customer \$2,009,359**  
**Simple Payback (yrs) 19.8**

\* Since design, project management and other project related costs are distributed among the ECMs, the project cost will not go up or down by exactly the amounts shown here if an ECM or ECMs are removed from scope.  
 \*\* Rebates, grants and the IRA ITC Direct Payment are contingent on final approval from providers and are not guaranteed.



# Energy Conservation Measures

Table 11: Project Cost Breakdown

Project Summary	TEA Contract % Maximum	Actual %	Amount
Technical Energy Audit	-	-	\$41,314
Pre-Construction Costs	-	-	-
Design and Engineering	8.0%	8.0%	\$278,081
Pre-Construction Services	3.0%	2.9%	\$100,000
Other Pre-Construction Costs	3.0%	2.9%	\$100,000
	Pre-Construction Cost Sub-Total		\$478,081
Construction Costs	-	-	-
Trade Subcontracts	-	46.7%	\$1,627,035
Design/Build Subcontracts	-	21.6%	\$751,671
Direct Purchase Equipment	-	0.0%	\$0
Construction Management	7.0%	6.9%	\$240,000
Project Engineering	2.0%	1.9%	\$65,500
General Conditions	1.5%	1.4%	\$49,200
Construction Completion	4.0%	3.9%	\$135,000
Other Construction Costs	4.0%	3.9%	\$136,001
	Construction Cost Subtotal		\$3,004,407
Estimated Project Amount			\$3,482,488
Profit	10.0%	10.0%	\$348,249
Contingency	5.0%	3.6%	\$125,370
Total Funded Amount (Before Incentives)	-	-	\$3,997,420

# Energy Conservation Measures

Table 12: Cash Flow

General Inputs	
EPC Construction Cost	\$ 3,997,420
3rd Party Fee (%)	0.0%
3rd Party Fee (\$)	\$0
Initial Customer Capital & DOLA Grant	\$1,663,696
Incentives	\$2,362
Constr. Period Int. (9 mo.)	\$0
Financed Cost	\$ 2,331,362
Years of Analysis	25
Finance Term (Yrs)	25
Payment Type	Stepped
Interest Rate	4.75%
Annual Savings	
Baseline Utility Spend	\$354,738
Electric	\$46,644
Natural Gas & Propane	\$30,527
Water & Sewer	\$4,725
O&M	\$19,731
Escalation Rates	
Electric	5.50%
Natural Gas & Propane	5.50%
Water & Sewer	5.50%
O&M	3.0%
O&M Last Year	25
Measurement & Verification	3.0%
Maintenance Service	2.0%
Measurement & Verification	
Year 1 M&V Cost	\$8,247
Year 2 M&V Cost	\$6,655
3rd Party Fee (%)	0.0%
M&V End Year	3
Maintenance Service Cost	\$0
Results	
20-YR NPV	\$3,000
25-YR NPV	\$1,082,000

Year	Annual Savings							M&V Cost	Total Annual Savings Less M&V & Maintenance	Cash Flow Analysis				
	Electric	Nat Gas	Water & Sewer *	Total Utility Savings	O&M	IRA ITC, Generator Grant & EV Charger Grant **	Total Savings			Interest	Principal	Total Payment	Loan Balance	Annual Cash Flow
0	\$15,142	\$18,316	\$2,835	\$36,293	\$11,839		\$48,132	\$0	\$48,132	\$0	\$0	\$0	\$2,331,362	\$0
1	\$46,861	\$30,527	\$4,725	\$82,113	\$19,731	\$322,003	\$423,847	(\$8,247)	\$463,732	(\$110,740)	(\$352,991)	(\$463,731)	\$1,978,371	\$1
2	\$49,210	\$32,206	\$5,906	\$87,322	\$20,323	\$0	\$107,645	(\$6,655)	\$100,990	(\$93,973)	(\$7,016)	(\$100,989)	\$1,971,354	\$1
3	\$51,916	\$33,978	\$7,383	\$93,277	\$20,933	\$0	\$114,209	(\$6,855)	\$107,354	(\$93,639)	(\$13,714)	(\$107,353)	\$1,957,640	\$1
4	\$54,772	\$35,846	\$5,496	\$96,114	\$21,561	\$0	\$117,674	\$0	\$117,674	(\$92,988)	(\$24,685)	(\$117,673)	\$1,932,955	\$1
5	\$57,784	\$37,818	\$5,798	\$101,400	\$22,207	\$0	\$123,607	\$0	\$123,607	(\$91,815)	(\$31,791)	(\$123,606)	\$1,901,163	\$1
6	\$60,962	\$39,898	\$6,117	\$106,977	\$22,874	\$0	\$129,851	\$0	\$129,851	(\$90,305)	(\$39,544)	(\$129,850)	\$1,861,619	\$1
7	\$64,315	\$42,092	\$6,453	\$112,861	\$23,560	\$0	\$136,421	\$0	\$136,421	(\$88,427)	(\$47,993)	(\$136,420)	\$1,813,626	\$1
8	\$67,853	\$44,407	\$6,808	\$119,068	\$24,267	\$0	\$143,335	\$0	\$143,335	(\$86,147)	(\$57,186)	(\$143,334)	\$1,756,440	\$1
9	\$71,584	\$46,850	\$7,183	\$125,617	\$24,995	\$0	\$150,611	\$0	\$150,611	(\$83,431)	(\$67,180)	(\$150,610)	\$1,689,260	\$1
10	\$75,522	\$49,426	\$7,578	\$132,526	\$25,744	\$0	\$158,270	\$0	\$158,270	(\$80,240)	(\$78,029)	(\$158,269)	\$1,611,231	\$1
11	\$79,675	\$52,145	\$7,994	\$139,815	\$26,517	\$0	\$166,331	\$0	\$166,331	(\$76,533)	(\$89,797)	(\$166,330)	\$1,521,434	\$1
12	\$84,057	\$55,013	\$8,434	\$147,504	\$27,312	\$0	\$174,817	\$0	\$174,817	(\$72,268)	(\$102,548)	(\$174,816)	\$1,418,886	\$1
13	\$88,681	\$58,039	\$8,898	\$155,617	\$28,132	\$0	\$183,749	\$0	\$183,749	(\$67,397)	(\$116,351)	(\$183,748)	\$1,302,536	\$1
14	\$93,558	\$61,231	\$9,387	\$164,176	\$28,976	\$0	\$193,152	\$0	\$193,152	(\$61,870)	(\$131,280)	(\$193,151)	\$1,171,255	\$1
15	\$98,704	\$64,598	\$9,904	\$173,206	\$29,845	\$0	\$203,051	\$0	\$203,051	(\$55,635)	(\$147,415)	(\$203,050)	\$1,023,840	\$1
16	\$104,132	\$68,151	\$10,448	\$182,732	\$30,740	\$0	\$213,472	\$0	\$213,472	(\$48,632)	(\$164,839)	(\$213,471)	\$859,001	\$1
17	\$109,860	\$71,900	\$11,023	\$192,782	\$31,662	\$0	\$224,445	\$0	\$224,445	(\$40,803)	(\$183,641)	(\$224,444)	\$675,360	\$1
18	\$115,902	\$75,854	\$11,629	\$203,385	\$32,612	\$0	\$235,998	\$0	\$235,998	(\$32,080)	(\$203,917)	(\$235,997)	\$471,442	\$1
19	\$122,277	\$80,026	\$12,269	\$214,572	\$33,591	\$0	\$248,162	\$0	\$248,162	(\$22,394)	(\$225,768)	(\$248,161)	\$245,675	\$1
20	\$129,002	\$84,428	\$12,944	\$226,373	\$34,598	\$0	\$260,972	\$0	\$260,972	(\$11,670)	(\$245,675)	(\$257,344)	\$0	\$3,628
21	\$136,097	\$89,071	\$13,656	\$238,824	\$35,636	\$0	\$274,460	\$0	\$274,460	\$0	\$0	\$0	\$0	\$274,460
22	\$143,582	\$93,970	\$14,407	\$251,959	\$36,705	\$0	\$288,664	\$0	\$288,664	\$0	\$0	\$0	\$0	\$288,664
23	\$151,479	\$99,138	\$15,199	\$265,817	\$37,807	\$0	\$303,623	\$0	\$303,623	\$0	\$0	\$0	\$0	\$303,623
24	\$159,811	\$104,591	\$16,035	\$280,437	\$38,941	\$0	\$319,377	\$0	\$319,377	\$0	\$0	\$0	\$0	\$319,377
25	\$168,600	\$110,343	\$16,917	\$295,861	\$40,109	\$0	\$335,970	\$0	\$335,970	\$0	\$0	\$0	\$0	\$335,970
26						\$0								
27						\$0								
28						\$0								
29						\$0								
30						\$0								
Totals	\$2,386,197	\$1,561,547	\$242,589	\$4,190,334	\$719,378	\$0	\$5,231,714	(\$21,757)	\$5,258,090	(\$1,400,986)	(\$2,331,362)	(\$3,732,348)	\$27,163,088	\$1,525,741

\* Water & Sewer savings escalated 25% in years 2 and 3 to account for increased City rates to help fund new Water Treatment Plant  
\*\* IRA ITC, Generator Grant & EV Charger Grant savings includes: Inflation Reduction Act Direct Payment (\$232,003), Dept of Homeland Security Emergency Mgmt Grant (\$84,000) and Charge Ahead Colorado EV Charging Station Grant (\$6000).

# Energy Conservation Measures

Table 13: Pre and Post Facility EUIs

Facility	Baseline								Lighting Savings		Envelope Savings		HVAC Savings		Solar Savings		Pre EUI	Post EUI
	Area	Electric Usage	Electric	Natural Gas	Natural Gas	Water Usage	Energy Cost Index	Total	Electric Savings	Natural Gas Savings	Electric	Natural Gas	Electric	Natural Gas	Electric			
Facility	SF	kWh	kBtu/SF	Therms	kBtu/SF	Kgal	\$	kBtu/SF	kWh	Therms	kWh	Therms	kWh	Therms	kWh		kBtu/SF	kBtu/SF
Gunnison City Hall	11,680	84,626	25	7877	67	62	\$ 1.31	92.2	-31,301	64.0	-93	-245	0	0	0		92.2	81.4
City Shop	9,491	68,825	25	11552	122	92	\$ 1.74	146.5	-9,225	12.0	0	-636	13,668	-1,667	-35,096		146.5	111.3
Electric Shop	5,022	4,737	3	1722	34	9	\$ 0.58	37.5	-1,860	5.0	0	-368	0	0	0		37.5	29.0
Garage and Fleet Storage (Blue Barn)	7,950	65,312	28				\$ 0.77	28.0	0	0.0	0	-247	0	0	0		28.0	24.9
Water Department Shop	4,500	6,208	5	2585	57		\$ 0.89	62.1	-1,022	0.0	0	-461	0	0	0		62.1	51.1
Jorgensen Park- Event Center/ Indoor Ice Rink	30,900	346411.3	38	18805	61	676	\$ 1.59	99.1	-8,615	4.0	-141	-1,606	-47,475	-2,529	-37,971		99.1	75.3
Jorgensen Park- Outdoor Covered Ice Rink	20,000			620	3		\$ 0.05	3.1	0	0.0	0	0	628	957	0		3.1	8.0
Jorgensen Park- Locker Room Building	1,250	9,815	27				\$ 0.97	26.8	0	0.0	-1,249	0	0	0	0		26.8	23.4
Police Department and Dispatch	6,266	113,682	62	893	14	52	\$ 1.92	76.2	-8,126	14.0	-3,336	-140	0	0	-39,736		76.2	46.3
Gunnison Community Center	49,953	841,053	57	70436	141	1235	\$ 2.86	198.5	-33,609	79.0	-429	-3,187	-10,896	-20,002	-75,093		198.5	144.0
IOOF Park- Restroom Building	150	2,271	52			101	\$ 5.90	51.7	-184	0.0	0	0	0	0	0		51.7	47.5
Legion Park- Restroom Building	572	3,718	22			9	\$ 1.46	22.2	-565	0.0	0	0	0	0	0		22.2	18.8
Meadows Park- Restroom Building	105	9,706	315			1057	\$ 38.79	315.5	-184	0.0	0	0	0	0	0		315.5	309.5
Tomichi Riverway Park- Restroom Building	150	2,642	60			355	\$ 9.87	60.1	-184	0.0	0	0	0	0	0		60.1	55.9
Char Mar Park- Restroom Building	105	1,052	34			1748	\$ 63.05	34.2	-184	0.0	0	0	0	0	0		34.2	28.2

# Energy Conservation Measures

## 4.2. ENERGY CONSERVATION MEASURES – GUARANTEED SAVINGS BY MEASURE

Table 14: Total Guaranteed Savings by Measure

ECM Name	Annual Utility Savings	Annual CO2 Savings (Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
01.02 Replace Radiant Infrared Heaters Total	\$100	1	\$350	\$450	100%	0	95	0	0	0	0	100	0	0
01.03 Replace Standing Pilot Heaters Total	\$117	1	\$0	\$117	100%	0	112	0	0	0	0	117	0	0
01.05 Expand Snow Melt System Total	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
01.06 Add HVAC System w-Zone Controls and Duct Mods Total	\$329	-1	\$0	\$329	100%	-13,732	1,575	0	0	(1,322)	0	1,651	0	0
03.02 Replace Make Up Air Unit Total	\$3,237	18	\$0	\$3,237	97%	7,911	2,361	0	0	762	0	2,475	0	0
04.01 Building Automation System Total	\$21,568	113	\$0	\$21,568	97%	21,602	18,387	25	25	2,080	0	19,279	91	118
04.05 Night Setback for Ice Machine Total	\$3,786	28	\$0	\$3,786	100%	39,319	0	0	0	3,786	0	0	0	0
05.01 Retro-Commissioning and TAB Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
05.02 Recommissioning Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
06.01 Address Ice Melt Humidity Issues from Zamboni Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
09.01 LED Lighting Upgrades Total	\$12,305	90	\$2,742	\$15,047	98%	129,827	-187	0	0	12,502	0	(196)	0	0
09.02 Ballpark Lighting Total	\$3,733	27	\$212	\$3,945	98%	38,761	0	0	0	3,733	0	0	0	0
09.04 Pond LED Lighting Upgrades Total	\$18	0	\$0	\$18	100%	183	0	0	0	18	0	0	0	0
10.01 Solar PV Total	\$21,407	156	\$0	\$21,407	98%	222,300	0	0	0	21,408	0	0	0	0
10.03 Assessment of Solar Panels Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
11.02 New Generators Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
13.01 Air Sealing and Weather Stripping Total	\$11,841	71	\$0	\$11,841	97%	50,195	6,683	0	0	4,834	0	7,008	0	0
17.01 Pool Water Treatment Total	\$4,950	1	\$16,427	\$21,377	100%	-6,874	1,046	545	545	(662)	0	1,096	1,969	2,547
21.01 EV Charging Station- Level 2 Total	(\$433)	-3	\$0	-\$433	100%	-4,500	0	0	0	(433)	0	0	0	0
Grand Total	\$81,894	495	\$19,731	\$101,625	98%	484,365	29,115	570	571	46,644	0	30,527	2,060	2,665

# Energy Conservation Measures

Table 15: Guaranteed Savings by Building by Measure

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
01.02-INICE Replace Radiant Infrared Heaters	\$100	1	\$350	\$450	100%	0	95	0	0	0	0	100	0	0
01.02 Replace Radiant Infrared Heaters Total	\$100	1	\$350	\$450	100%	0	95	0	0	0	0	100	0	0
01.03-CIS Replace Standing Pilot Heaters	\$117	1	\$0	\$117	100%	0	112	0	0	0	0	117	0	0
01.03 Replace Standing Pilot Heaters Total	\$117	1	\$0	\$117	100%	0	112	0	0	0	0	117	0	0
01.05-OUICE Expand Snow Melt System	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
01.05 Expand Snow Melt System Total	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
01.06-CIS Add HVAC System w-Zone Controls and Duct Mods	\$329	-1	\$0	\$329	100%	-13,732	1,575	0	0	(1,322)	0	1,651	0	0
01.06 Add HVAC System w-Zone Controls and Duct Mods Total	\$329	-1	\$0	\$329	100%	-13,732	1,575	0	0	(1,322)	0	1,651	0	0
03.02-INICE Replace Make Up Air Unit	\$3,237	18	\$0	\$3,237	97%	7,911	2,361	0	0	762	0	2,475	0	0
03.02 Replace Make Up Air Unit Total	\$3,237	18	\$0	\$3,237	97%	7,911	2,361	0	0	762	0	2,475	0	0
04.01-GCC Building Automation System	\$21,568	113	\$0	\$21,568	97%	21,602	18,387	25	25	2,080	0	19,279	91	118
04.01 Building Automation System Total	\$21,568	113	\$0	\$21,568	97%	21,602	18,387	25	25	2,080	0	19,279	91	118
04.05-INICE Night Setback for Ice Machine	\$3,786	28	\$0	\$3,786	100%	39,319	0	0	0	3,786	0	0	0	0
04.05 Night Setback for Ice Machine Total	\$3,786	28	\$0	\$3,786	100%	39,319	0	0	0	3,786	0	0	0	0
05.01-CIH Retro-Commissioning and TAB	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
05.01 Retro-Commissioning and TAB Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
05.02-WWTP Recommissioning	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
05.02 Recommissioning Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
06.01-OUICE Address Ice Melt Humidity Issues from Zamboni	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
06.01 Address Ice Melt Humidity Issues from Zamboni Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0



# Energy Conservation Measures

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-CHAR LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-CIH LED Lighting Upgrades	\$2,886	21	\$316	\$3,202	98%	30,675	-65	0	0	2,954	0	(68)	0	0
09.01-CIS LED Lighting Upgrades	\$858	6	\$131	\$989	98%	9,041	-12	0	0	871	0	(13)	0	0
09.01-ELS LED Lighting Upgrades	\$170	1	\$14	\$184	98%	1,823	-5	0	0	176	0	(5)	0	0
09.01-GCC LED Lighting Upgrades	\$3,087	23	\$756	\$3,843	98%	32,937	-81	0	0	3,172	0	(84)	0	0
09.01-GSB LED Lighting Upgrades	\$543	4	\$248	\$791	98%	5,693	-5	0	0	548	0	(5)	0	0
09.01-INICE LED Lighting Upgrades	\$809	6	\$327	\$1,136	98%	8,443	-4	0	0	813	0	(4)	0	0
09.01-IOOF LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-JCO LED Lighting Upgrades	\$27	0	\$11	\$38	98%	284	0	0	0	27	0	0	0	0
09.01-LEG LED Lighting Upgrades	\$211	2	\$27	\$238	98%	2,195	0	0	0	211	0	0	0	0
09.01-MEA LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-PARK LED Lighting Upgrades	\$263	2	\$90	\$353	98%	2,727	0	0	0	263	0	0	0	0
09.01-TOM LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-VTR LED Lighting Upgrades	\$0	0	\$17	\$17	98%	0	0	0	0	0	0	0	0	0
09.01-WAT LED Lighting Upgrades	\$96	1	\$100	\$196	98%	1,002	0	0	0	96	0	0	0	0
09.01-WELL LED Lighting Upgrades	\$506	4	\$64	\$570	98%	5,255	0	0	0	506	0	0	0	0
09.01-WWTP LED Lighting Upgrades	\$2,029	15	\$411	\$2,440	98%	21,069	0	0	0	2,029	0	0	0	0
09.01-PDD LED Lighting Upgrades	\$752	6	\$190	\$942	98%	7,963	-14	0	0	767	0	(15)	0	0
09.01 LED Lighting Upgrades Total	\$12,305	90	\$2,742	\$15,047	98%	129,827	-187	0	0	12,502	0	(196)	0	0
09.02-JCO Ballpark Lighting	\$3,733	27	\$212	\$3,945	98%	38,761	0	0	0	3,733	0	0	0	0
09.02 Ballpark Lighting Total	\$3,733	27	\$212	\$3,945	98%	38,761	0	0	0	3,733	0	0	0	0
09.04-JCO Pond LED Lighting Upgrades	\$18	0	\$0	\$18	100%	183	0	0	0	18	0	0	0	0
09.04 Pond LED Lighting Upgrades Total	\$18	0	\$0	\$18	100%	183	0	0	0	18	0	0	0	0

# Energy Conservation Measures

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
10.01-CIS Solar PV	\$3,312	24	\$0	\$3,312	98%	34,394	0	0	0	3,312	0	0	0	0
10.01-GCC Solar PV	\$7,087	52	\$0	\$7,087	98%	73,591	0	0	0	7,087	0	0	0	0
10.01-INICE Solar PV	\$3,583	26	\$0	\$3,583	98%	37,212	0	0	0	3,583	0	0	0	0
10.01-PDD Solar PV	\$3,750	27	\$0	\$3,750	98%	38,941	0	0	0	3,750	0	0	0	0
10.01-WWTP Solar PV	\$3,675	27	\$0	\$3,675	98%	38,162	0	0	0	3,675	0	0	0	0
10.01 Solar PV Total	\$21,407	156	\$0	\$21,407	98%	222,300	0	0	0	21,408	0	0	0	0
10.03-GCC Assessment of Solar Panels	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
10.03 Assessment of Solar Panels Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
11.02-GCC New Generators	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
11.02 New Generators Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
13.01-BLU Air Sealing and Weather Stripping	\$251	1	\$0	\$251	97%	0	240	0	0	0	0	251	0	0
13.01-CIH Air Sealing and Weather Stripping	\$258	1	\$0	\$258	97%	90	238	0	0	9	0	249	0	0
13.01-CIS Air Sealing and Weather Stripping	\$647	3	\$0	\$647	97%	0	617	0	0	0	0	647	0	0
13.01-ELS Air Sealing and Weather Stripping	\$374	2	\$0	\$374	97%	0	357	0	0	0	0	374	0	0
13.01-GCC Air Sealing and Weather Stripping	\$3,281	17	\$0	\$3,281	97%	416	3,091	0	0	40	0	3,241	0	0
13.01-INICE Air Sealing and Weather Stripping	\$1,647	8	\$0	\$1,647	97%	137	1,558	0	0	13	0	1,633	0	0
13.01-LOC Air Sealing and Weather Stripping	\$117	1	\$0	\$117	97%	1,212	0	0	0	117	0	0	0	0
13.01-PARK Air Sealing and Weather Stripping	\$1,347	10	\$0	\$1,347	97%	13,992	0	0	0	1,347	0	0	0	0
13.01-PDD Air Sealing and Weather Stripping	\$454	3	\$0	\$454	97%	3,236	136	0	0	312	0	143	0	0
13.01-WDS Air Sealing and Weather Stripping	\$469	2	\$0	\$469	97%	0	447	0	0	0	0	469	0	0
13.01-WWTP Air Sealing and Weather Stripping	\$2,996	22	\$0	\$2,996	97%	31,113	0	0	0	2,996	0	0	0	0
13.01 Air Sealing and Weather Stripping Total	\$11,841	71	\$0	\$11,841	97%	50,195	6,683	0	0	4,834	0	7,008	0	0
17.01-GCC Pool Water Treatment	\$4,950	1	\$16,427	\$21,377	100%	-6,874	1,046	545	545	(662)	0	1,096	1,969	2,547
17.01 Pool Water Treatment Total	\$4,950	1	\$16,427	\$21,377	100%	-6,874	1,046	545	545	(662)	0	1,096	1,969	2,547
21.01-GCC EV Charging Station- Level 2	(\$433)	-3	\$0	-\$433	100%	-4,500	0	0	0	(433)	0	0	0	0
21.01 EV Charging Station- Level 2 Total	(\$433)	-3	\$0	-\$433	100%	-4,500	0	0	0	(433)	0	0	0	0
Grand Total	\$81,894	495	\$19,731	\$101,625	98%	484,365	29,115	570	571	46,644	0	30,527	2,060	2,665

# Energy Conservation Measures

## 4.3. ENERGY CONSERVATION MEASURES – GUARANTEED SAVINGS SUMMARY BY BUILDING

Table 16: Guaranteed Savings by Building

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-CHAR LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
Char Mar Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
01.03-CIS Replace Standing Pilot Heaters	\$117	1	\$0	\$117	100%	0	112	0	0	0	0	117	0	0
01.06-CIS Add HVAC System w-Zone Controls and Duct Mods	\$329	-1	\$0	\$329	100%	-13,732	1,575	0	0	(1,322)	0	1,651	0	0
09.01-CIS LED Lighting Upgrades	\$858	6	\$131	\$989	98%	9,041	-12	0	0	871	0	(13)	0	0
10.01-CIS Solar PV	\$3,312	24	\$0	\$3,312	98%	34,394	0	0	0	3,312	0	0	0	0
13.01-CIS Air Sealing and Weather Stripping	\$647	3	\$0	\$647	97%	0	617	0	0	0	0	647	0	0
City Shop Total	\$5,263	33	\$131	\$5,394	99%	29,703	2,291	0	0	2,860	0	2,402	0	0
09.01-ELS LED Lighting Upgrades	\$170	1	\$14	\$184	98%	1,823	-5	0	0	176	0	(5)	0	0
13.01-ELS Air Sealing and Weather Stripping	\$374	2	\$0	\$374	97%	0	357	0	0	0	0	374	0	0
Electric Shop Total	\$544	3	\$14	\$558	98%	1,823	352	0	0	176	0	369	0	0
13.01-BLU Air Sealing and Weather Stripping	\$251	1	\$0	\$251	97%	0	240	0	0	0	0	251	0	0
Garage and Fleet Storage (Blue Barn) Total	\$251	1	\$0	\$251	97%	0	240	0	0	0	0	251	0	0
05.01-CIH Retro-Commissioning and TAB	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
09.01-CIH LED Lighting Upgrades	\$2,886	21	\$316	\$3,202	98%	30,675	-65	0	0	2,954	0	(68)	0	0
13.01-CIH Air Sealing and Weather Stripping	\$258	1	\$0	\$258	97%	90	238	0	0	9	0	249	0	0
Gunnison City Hall Total	\$3,144	23	\$316	\$3,460	98%	30,765	172	0	0	2,963	0	181	0	0
04.01-GCC Building Automation System	\$21,568	113	\$0	\$21,568	97%	21,602	18,387	25	25	2,080	0	19,279	91	118
09.01-GCC LED Lighting Upgrades	\$3,087	23	\$756	\$3,843	98%	32,937	-81	0	0	3,172	0	(84)	0	0
10.01-GCC Solar PV	\$7,087	52	\$0	\$7,087	98%	73,591	0	0	0	7,087	0	0	0	0
10.03-GCC Assessment of Solar Panels	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
11.02-GCC New Generators	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
13.01-GCC Air Sealing and Weather Stripping	\$3,281	17	\$0	\$3,281	97%	416	3,091	0	0	40	0	3,241	0	0
17.01-GCC Pool Water Treatment	\$4,950	1	\$16,427	\$21,377	100%	-6,874	1,046	545	545	(662)	0	1,096	1,969	2,547
21.01-GCC EV Charging Station- Level 2	(\$433)	-3	\$0	-\$433	100%	-4,500	0	0	0	(433)	0	0	0	0
Gunnison Community Center Total	\$39,540	202	\$17,183	\$56,723	99%	117,172	22,444	570	571	11,284	0	23,532	2,060	2,665

# Energy Conservation Measures

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-GSB LED Lighting Upgrades	\$543	4	\$248	\$791	98%	5,693	-5	0	0	548	0	(5)	0	0
Gunnison Storage Building Total	\$543	4	\$248	\$791	98%	5,693	-5	0	0	548	0	(5)	0	0
05.02-WWTP Recommissioning	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
09.01-WWTP LED Lighting Upgrades	\$2,029	15	\$411	\$2,440	98%	21,069	0	0	0	2,029	0	0	0	0
10.01-WWTP Solar PV	\$3,675	27	\$0	\$3,675	98%	38,162	0	0	0	3,675	0	0	0	0
13.01-WWTP Air Sealing and Weather Stripping	\$2,996	22	\$0	\$2,996	97%	31,113	0	0	0	2,996	0	0	0	0
Gunnison Waste Water Treatment Plant Total	\$8,700	64	\$411	\$9,111	98%	90,344	0	0	0	8,700	0	0	0	0
09.01-WELL LED Lighting Upgrades	\$506	4	\$64	\$570	98%	5,255	0	0	0	506	0	0	0	0
Gunnison Well Sites Total	\$506	4	\$64	\$570	98%	5,255	0	0	0	506	0	0	0	0
09.01-IOOF LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
IOOF Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-JCO LED Lighting Upgrades	\$27	0	\$11	\$38	98%	284	0	0	0	27	0	0	0	0
09.02-JCO Ballpark Lighting	\$3,733	27	\$212	\$3,945	98%	38,761	0	0	0	3,733	0	0	0	0
09.04-JCO Pond LED Lighting Upgrades	\$18	0	\$0	\$18	100%	183	0	0	0	18	0	0	0	0
Jorgensen Complex Total	\$3,778	28	\$223	\$4,001	99%	39,228	0	0	0	3,778	0	0	0	0
01.02-INICE Replace Radiant Infrared Heaters	\$100	1	\$350	\$450	100%	0	95	0	0	0	0	100	0	0
03.02-INICE Replace Make Up Air Unit	\$3,237	18	\$0	\$3,237	97%	7,911	2,361	0	0	762	0	2,475	0	0
04.05-INICE Night Setback for Ice Machine	\$3,786	28	\$0	\$3,786	100%	39,319	0	0	0	3,786	0	0	0	0
09.01-INICE LED Lighting Upgrades	\$809	6	\$327	\$1,136	98%	8,443	-4	0	0	813	0	(4)	0	0
10.01-INICE Solar PV	\$3,583	26	\$0	\$3,583	98%	37,212	0	0	0	3,583	0	0	0	0
13.01-INICE Air Sealing and Weather Stripping	\$1,647	8	\$0	\$1,647	97%	137	1,558	0	0	13	0	1,633	0	0
Jorgensen Park- Event Center/ Indoor Ice Rink Total	\$13,162	87	\$677	\$13,839	98%	93,021	4,010	0	0	8,958	0	4,204	0	0
13.01-LOC Air Sealing and Weather Stripping	\$117	1	\$0	\$117	97%	1,212	0	0	0	117	0	0	0	0
Jorgensen Park- Locker Room Building Total	\$117	1	\$0	\$117	97%	1,212	0	0	0	117	0	0	0	0
01.05-OUICE Expand Snow Melt System	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
06.01-OUICE Address Ice Melt Humidity Issues from Zamboni	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
Jorgensen Park- Outdoor Covered Ice Rink Total	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
09.01-PARK LED Lighting Upgrades	\$263	2	\$90	\$353	98%	2,727	0	0	0	263	0	0	0	0
13.01-PARK Air Sealing and Weather Stripping	\$1,347	10	\$0	\$1,347	97%	13,992	0	0	0	1,347	0	0	0	0
Jorgensen Park- Parks Building Total	\$1,610	12	\$90	\$1,700	98%	16,719	0	0	0	1,610	0	0	0	0

# Energy Conservation Measures

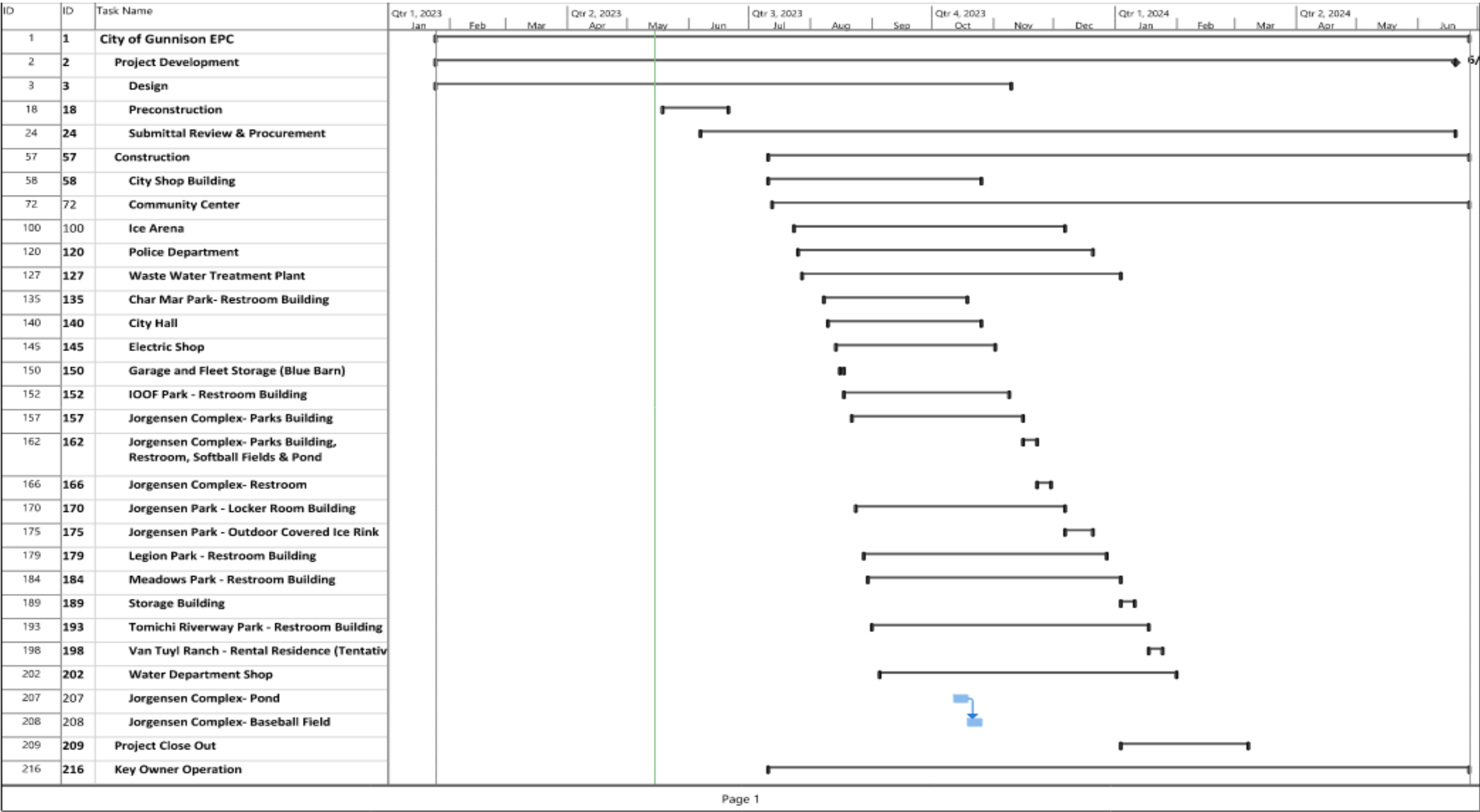
ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-LEG LED Lighting Upgrades	\$211	2	\$27	\$238	98%	2,195	0	0	0	211	0	0	0	0
Legion Park- Restroom Building Total	\$211	2	\$27	\$238	98%	2,195	0	0	0	211	0	0	0	0
09.01-MEA LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
Meadows Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-PDD LED Lighting Upgrades	\$752	6	\$190	\$942	98%	7,963	-14	0	0	767	0	(15)	0	0
10.01-PDD Solar PV	\$3,750	27	\$0	\$3,750	98%	38,941	0	0	0	3,750	0	0	0	0
13.01-PDD Air Sealing and Weather Stripping	\$454	3	\$0	\$454	97%	3,236	136	0	0	312	0	143	0	0
Police Department and Dispatch Total	\$4,956	36	\$190	\$5,146	98%	50,141	122	0	0	4,829	0	128	0	0
09.01-TOM LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
Tomichi Riverway Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-VTR LED Lighting Upgrades	\$0	0	\$17	\$17	98%	0	0	0	0	0	0	0	0	0
Van Tuyl Ranch- Rental Residence Total	\$0	0	\$17	\$17	98%	0	0	0	0	0	0	0	0	0
09.01-WAT LED Lighting Upgrades	\$96	1	\$100	\$196	98%	1,002	0	0	0	96	0	0	0	0
13.01-WDS Air Sealing and Weather Stripping	\$469	2	\$0	\$469	97%	0	447	0	0	0	0	469	0	0
Water Department Shop Total	\$565	3	\$100	\$665	98%	1,002	447	0	0	96	0	469	0	0
Grand Total	\$81,894	495	\$19,731	\$101,625	98%	484,365	29,115	570	571	46,644	0	30,527	2,060	2,665



# Energy Conservation Measures

## 4.4. PRELIMINARY CONSTRUCTION SCHEDULE

Figure 2: Preliminary Construction Schedule



# Energy Conservation Measures

## 4.5. ENERGY CONSERVATION MEASURE DESCRIPTIONS

### 4.5.1. REPLACE RADIANT INFRARED HEATERS

#### Existing Conditions

The spectator area of the Indoor Ice Arena is heated by five gas-fired radiant tube heaters that are manually controlled by a twist time. Over time, the radiant heaters have corroded and developed leaks in the venting joints and where the burner tubes have been connected together. Water vapor (one of the byproducts of combusting natural gas) condenses inside the tubes and drips out through holes onto the spectators.

#### Proposed Modifications

This measure consists of replacing the five existing radiant tube heaters with five new radiant tube heaters that are rated for this environment and direct-vented to the outdoors (both air intake and flue products). The new heaters will heat more efficiently than the existing heaters, not drip on occupants and reduce the potential for harmful combustion byproducts from entering the spectator seating area. A new 2-hour wall timer will also be installed. Refer to Appendix I - Scopes of Work for additional details.

#### Savings Calculations

The savings for the ECM were determined using a basic excel spreadsheet that calculates the natural gas consumption for the current radiant heaters (based on the current efficiency of the infrared heaters at 80%) and compares it to the proposed natural gas consumption for the new heaters with a higher efficiency of 85%. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

#### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

#### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

#### Measurement & Verification Plan

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

#### Training Plan

Provide 4 hours of owner training total for all new HVAC systems included in this project.

#### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

#### Post Installation Facility Impacts

Facility personnel will need to maintain the new equipment but the maintenance requirement will be no more or less than the existing system. Operation and maintenance manuals will be included with closeout documentation. The calculation of the Operations & Maintenance savings can be found in Appendix H.

# Energy Conservation Measures

## 4.5.2. REPLACE STANDING PILOT UNIT HEATER

### Existing Conditions

The Parts Area of the City Shop building is served by a standing-pilot gas-fired unit heater. Standing-pilot heaters are an outdated technology that burns more gas than an electronic ignition unit heater and can pose a safety risk due to the presence of a constant flame.

### Proposed Modifications

This measure consists of replacing the existing unit heater with a modern, electronic ignition, gas-fired unit heater and a new programmable thermostat. The new unit heater will be more efficient than the existing heater and additional energy savings will be achieved by setting back the space temperature setpoint when the facility is not occupied. Refer to Appendix I - Scopes of Work for additional details.

### Savings Calculations

The savings for the ECM were determined using a basic excel spreadsheet that calculates the natural gas consumption for the current unit heater (based on the current efficiency of the unit heater at 75%) and compares it to the proposed natural gas consumption for the new heater with a higher efficiency of 80%. Savings associated with eliminating the standing pilot light are also included in the calculation. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

### Measurement & Verification Plan

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

### Training Plan

Provide 4 hours of owner training total for all new HVAC systems included in this project.

### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

### Post Installation Facility Impacts

Facility personnel will need to maintain the new equipment but the maintenance requirement will be no more or less than the existing system. Operation and maintenance manuals will be included with closeout documentation.

# Energy Conservation Measures

## 4.5.3. EXPAND SNOW MELT SYSTEM

### Existing Conditions

The outdoor ice arena is shaded and protected by a metal roof structure. This roof structure also shades the Zamboni entrance to the outdoor ice arena. As the Zamboni leaves the outdoor ice rink, dripping water pools and freezes by the entrance creating a slip and fall hazard for staff and spectators. Sand and salt cannot be used because it has the potential to contaminate the outdoor rink playing surface.

### Proposed Modifications

This measure consists of installing a dedicated snow-melt system to the 600 sq ft area between the outdoor rink entrance and the Zamboni garage directly east of the outdoor rink. Concrete will be removed and replaced as part of this measure and the new high-efficiency condensing snow-melt boiler, pumps and controls will be installed inside the Zamboni garage. While this measure has an energy penalty associated with it, it will improve the safety of the area by eliminating slip and fall hazards and will also ease the burden on ice arena staff to chip and remove ice from this area. Refer to Appendix I - Scopes of Work for additional details.

### Savings Calculations

An Excel spreadsheet was used to determine the number of hours per year that are below freezing during the months that the outdoor ice arena is open for business and the number of hours per year that snow or rain/snow mix occurs during these hours. Two levels of energy use are modeled: one for snow-melt mode (when there is precipitation and it's below freezing) and one for idle mode (when it's below freezing but there's no precipitation). The spreadsheet totals the natural gas and pump energy consumption for the two modes of operation over the course of the year. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

### Measurement & Verification Plan

Because there are no energy savings tied to this measure, there is no M&V plan for it.

### Training Plan

Provide 4 hours of owner training total for all new HVAC systems included in this project.

### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

### Post Installation Facility Impacts

There will be some additional routine maintenance associated with maintaining the pump and boiler, but it's expected to be offset by the elimination of the maintenance requirement associated with chipping and removing ice from the area it will serve.

# Energy Conservation Measures

## 4.5.4. ADD HVAC SYSTEM W-ZONE CONTROLS AND DUCT MODS

### Existing Conditions

The water department and electrical department storage areas of the main City Shop building were recently remodeled into office space. They are still served by gas-fired unit heaters that are not well suited to serving the remodeled, partitioned spaces and they are not equipped with cooling.

### Proposed Modifications

This measure consists of installing a new high-efficiency gas-fired furnace split-system with air-conditioning and a change-over/bypass zoning system for the remodeled areas. A portion of the remodeled areas was added to the existing furnace split system in the past so these zones will be removed from the existing system and put on the new system. The new ducted system will be better suited to serve the partitioned areas and will give the occupant in each zone some control over the temperature of their space. Refer to Appendix I - Scopes of Work for additional details.

### Savings Calculations

The savings for this ECM were modeled using an Excel Spreadsheet energy model (Mck8760) which compares baseline and proposed operation over a year of TMY3 weather data. This building was modeled in two parts the Garage/Shop Area and the Office Space. The savings for this ECM comes from removing the gas-fired unit heaters that are currently in the space and replacing them with a more efficient gas-fired furnace with zoning system. The electrical penalty for this ECM comes from the addition of cooling to the space. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

### Measurement & Verification Plan

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

### Training Plan

Provide 4 hours of owner training total for all new HVAC systems included in this project.

### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

### Post Installation Facility Impacts

There will be some additional routine maintenance associated with maintaining the furnace and condensing unit but there will also be a maintenance reduction by eliminating the gas fired unit heaters.



# Energy Conservation Measures

## 4.5.5. REPLACE MAKE-UP AIR UNIT

### Existing Conditions

The gas-fired make-up air unit serving the main ice arena at the Indoor Ice Arena has not been reliable and was not originally configured to operate in the indoor ice arena where the space temperature setpoint during the winter is 40°F. As a result, the controller had to be custom programmed which has created on-going issues with routine service and maintenance. The unreliability negatively impacts the Ice Arena and City staff and as a result, they would like to see this unit replaced as part of this project.

### Proposed Modifications

This measure consists of replacing the existing gas-fired make-up air unit with a new gas-fired make-up air unit designed to operate in the main ice arena. Refer to Appendix I - Scopes of Work for additional details.

### Savings Calculations

The savings for this ECM were modeled using an Excel Spreadsheet energy model (McK8760) which compares baseline and proposed operation over a year of TMY3 weather data. Multiple models were created in McK8760 for this facility.

The savings for the Ice Arena come from installing a smaller Make-up Air Unit at the Ice Arena with better fan efficiency and allowing the outside air damper to modulate and decrease the amount of outside air in the space when unnecessary. The baseline maximum airflow is 15,432 cfm, minimum outside air is set at 58% and the fan break horsepower is currently set at 9.8 hp. In the proposed case, the maximum airflow is 10,320 cfm, the minimum outside air damper position is 3% and the fan break horsepower is 7.9 hp. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

### Measurement & Verification Plan

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

### Training Plan

Provide 4 hours of owner training total for all new HVAC systems included in this project.

### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

### Post Installation Facility Impacts

The post installation maintenance is projected to be less than the current unit due to the renewal of the equipment life-cycle and by utilizing a make-up air unit that is designed for use in this environment.

# Energy Conservation Measures

## 4.5.6. BUILDING AUTOMATION SYSTEM

### Existing Conditions

The Community Center is controlled by multiple stand-alone thermostats and controllers that cannot be accessed offsite via the internet. This makes scheduling and controlling of the Heating, Ventilation and Air-conditioning (HVAC) equipment more difficult in that it requires staff to go to each individual piece of equipment in order to make changes to equipment operation and diagnose operational issues. The existing thermostats and controllers also do not have the capability to alarm maintenance and pool staff in the event that something malfunctions.

### Proposed Modifications

This measure consists of installing a modern Building Automation System (BAS) to control and/or monitor the existing HVAC and major pool equipment. The BAS will provide the means to remotely control, schedule, trend, monitor equipment as well as provide alarms to designated staff if a piece of equipment malfunctions or fails to operate as intended. The BAS will also allow for the implementation of modern control sequences such as carbon-dioxide (CO<sub>2</sub>) based demand control ventilation, outside air economizing, optimal start-up, supply air reset and night setback.

For a detailed list of equipment and control points, Refer to Appendix I - Scopes of Work.

### Savings Calculations

The savings for this ECM were modeled using an Excel Spreadsheet energy model (Mck8760) which compares baseline and proposed operation over a year of TMY3 weather data. Multiple models were created in Mck8760 for this facility.

The savings for the Community Center BAS come from setting back the space temperatures when the space is unoccupied, utilization of economizer free-cooling when outside air conditions are favorable, demand controlled ventilation for the gymnasium, mat room and cafeteria and reduction of ventilation air in the pool at night when the facility is unoccupied. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

### Measurement & Verification Plan

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

### Training Plan

Provide 4 hours of owner training total for all the Building Automation System and other controls included in this project.

### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend

# Energy Conservation Measures

beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## **Post Installation Facility Impacts**

The post installation maintenance is projected to be less than the current maintenance due to the remote access, scheduling and control of the equipment in the Community Center.

### **4.5.7. NIGHT SETBACK FOR ICE MACHINE**

#### **Existing Conditions**

Currently the Ice Arena ice making chiller operates 24/7 during the times of the year that the Ice Arena is operational (September through March).

#### **Proposed Modifications**

This measure consists of manually shutting off the ice making chiller when the arena is not occupied at night and allowing the temperature of the ice to coast until the following morning.

#### **Savings Calculations**

Ice machine operation was trended via current transducers to quantify operation and measure amps to calculate power consumption. Savings are based on turning off the ice making chiller from 11pm to 8am the following morning. Refer to Appendix H – Savings Calculations for a more detailed description of the savings calculation methodology and Appendix M – Electronic Calcs for the electronic version of the calculation.

#### **Scope of Work**

N/A

#### **Equipment Service Life**

N/A

#### **Commissioning Plan**

N/A

#### **Measurement & Verification Plan**

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

#### **Training Plan**

N/A

#### **Warranty**

N/A

## **Post Installation Facility Impacts**

This measure will require the ice arena staff to shut off the chiller at night and turn it back on in the morning.

# Energy Conservation Measures

## 4.5.8. RE-COMMISSIONING

### Existing Conditions

City Hall: Interviews with City Hall occupants during the Investment Grade Audit revealed numerous comfort complaints which can be attributed to sub-optimal system control, system balancing issues, leaky ductwork and operational limitations of the HVAC systems.

Wastewater Treatment Plant: During the course of the Investment Grade Audit, the City expressed concern that the Waste Water Treatment Plant (WWTP) may not be operating at optimal performance.

### Proposed Modifications

City Hall: McKinstry will re-commission the HVAC equipment serving City Hall including the rooftop unit, furnace split systems, zone dampers, baseboard heaters, boilers and pumps. McKinstry will provide air-side test and balance for these systems and will adjust the isolation valves on the hot water baseboard heaters to provide the target design flow for the baseboards heaters. McKinstry is carrying an allowance of \$2500 for patching/sealing leaky ductwork.

Wastewater Treatment Plant: McKinstry will work with the WWTP staff to re-commission the water treatment plant systems. The intent is to make sure the water treatment systems are operating per the system control narratives, however, it was noted during the audit that the operation of some systems have been modified to operate slightly differently than the original intent in order to properly function. McKinstry will document these differences and work with the staff to determine the correct course of action.

### Savings Calculations

McKinstry is not including any energy savings for this scope of work. If any savings opportunities are identified during the Re-commissioning effort, McKinstry will quantify the energy savings and present them to the City.

### Scope of Work

N/A

### Equipment Service Life

N/A

### Commissioning Plan

N/A

### Measurement & Verification Plan

N/A

### Training Plan

N/A

### Warranty

N/A



# Energy Conservation Measures

## Post Installation Facility Impacts

This measure should reduce the burden on City maintenance staff by addressing comfort issues being experienced in City Hall. No maintenance impact is projected for the staff at the WWTP.

### 4.5.9. ADDRESS ICE-MELT HUMIDITY ISSUE IN ZAMBONI BUILDING

#### Existing Conditions

The Zamboni ice shavings are dumped into a pit in the Zamboni Building where condenser heat from the ice-making chiller is used to melt them. The resulting humidity given off by the melted shavings can condense on the cold metal structure causing corrosion.

#### Proposed Modifications

This measure consists of installing a dedicated exhaust fan, motorized outside air louver, replacing the existing unit heater with a larger unit heater and installing a humidistat that will cycle the exhaust fan and louver when humidity levels rise above a user selectable setpoint. Refer to Appendix I - Scopes of Work for additional details.

#### Savings Calculations

There are no energy savings associated with this measure.

#### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

#### Commissioning Plan

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

#### Measurement & Verification Plan

Because there are no energy savings tied to this measure, there is no M&V plan for it.

#### Training Plan

Provide 4 hours of owner training total for all new HVAC systems included in this project.

#### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## Post Installation Facility Impacts

There will be some additional routine maintenance associated with maintaining the fan and louver but the improved humidity control will reduce future maintenance associated with addressing corrosion on the metal structure.



# Energy Conservation Measures

## 4.5.10. LED LIGHTING UPGRADES

### Existing Conditions

The existing interior and building-attached exterior lighting varies by facility but primarily consists of LEDs, fluorescent tube lighting and compact fluorescent lighting. A breakdown of the existing lighting fixtures by major category is as follows:

- Fluorescent Tube: 508
- Light Emitting Diode (LEDs): 493
- Compact Fluorescent (CFL): 182
- Incandescent: 64
- Metal Halide: 52
- High Pressure Sodium (HPS): 25
- Halogen: 25

Refer to Appendix A – Lighting Audit line-by-line for detailed list of lighting fixtures and lighting controls by facility. With the exception of the existing LED fixtures & lamps, all other existing lighting technology is outdated and has a modern LED equivalent. LED lighting uses less energy and lasts longer than fluorescent, incandescent, metal halide, high pressure sodium and halogen lighting.

### Proposed Modifications

Reduce energy and maintenance costs by retrofitting or replacing existing non-LED lighting fixtures with modern, high efficiency, long lasting LED lighting designed to meet or exceed existing levels.

Refer to Appendix A – Lighting Audit for a detailed list of existing fixtures to be retrofitted or replaced with LEDs.

### Savings Calculations

The energy savings for this ECM are based on the installation of lower wattage/higher efficiency LED lighting retrofits that reduce lighting power consumption and, in some cases, reduce runtime hours via lighting controls. Hours of operation were determined through data logging, building operation schedules and staff interviews.

A line-by-line list of the specific fixture retrofits and associated savings, by facility, by room is included in the 90% IGA Report submission.

Refer to Appendix A – Lighting Audit for savings detail.

### Scope of Work

Refer to Appendix A for the line-by-line summary of fixture retrofits, by facility and room.

The scope of work for this measure consists of the turn-key installation of the lighting lamps, retrofit kits and new fixtures listed in the line-by-line summary shown in Appendix A – Lighting Audit of the IGA Report.

### Equipment Service Life

The life expectancies of the new LEDs ranges from 50,000 hrs to 200,000 hrs depending on the fixture type. Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Due to the straightforward nature of this ECM, inspections will be completed on a representative sample of

# Energy Conservation Measures

fixtures by a McKinstry Site Superintendent. Typically, a minimum of the top 20% energy saving line items will be visually verified. Lighting controls will be commissioned by the McKinstry commissioning agent.

## Measurement & Verification Plan

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

## Training Plan

Provide 2 hours of owner training total for all LED measures (interior, exterior and pole lighting) on proper operation and maintenance of LED lamps and fixtures including, but not limited to: replacement of LED lamps, operation, maintenance and troubleshooting of lighting occupancy sensors (if applicable) and pole lighting controls.

## Warranty

Due to the nature of the lighting retrofit project, the lighting warranty varies from the standard Energy Savings Performance Contract warranty. Once the warranty period is entered, the parts and material warranties for the lighting components will be transferred to the Owner who will be responsible for the labor to replace any lighting components (lamps, drivers, fixtures, etc.) covered under the warranties.

## Post Installation Facility Impacts

The longer life expectancy of LED lighting will significantly reduce the time, effort and cost associated with maintaining the City's lighting systems. Material O&M savings are currently accounted for in the cashflow, but the cost associated with the City's internal labor is not included despite the man hours saved being significant.

### 4.5.11. BALLPARK AND POND LED LIGHTING

#### Existing Conditions

The exterior pole lighting at the Jorgensen baseball/softball field complex consists of older generation technology metal halide fixtures. This older technology produces less lumens per watt and has a lower life expectancy than modern LED lighting. In the event of a power outage, the metal halide fixtures must cool before they will come back on which can result in a few minutes of darkness before they are able to provide light again.

Refer to Appendix A – Lighting Audit line-by-line for detailed list of lighting fixtures and lighting controls by facility.

#### Proposed Modifications

Ballfields: Reduce energy and maintenance costs by replacing existing metal halide lighting fixtures with modern, high efficiency, dark-sky compliant long-lasting LED lighting. The new LED lighting will be dimmable and can be turned on/off and dimmed from a web-accessible app. The existing poles will be re-used with the new fixtures.

Pond Lighting: Install one new pole and LED lighting modules designed to illuminate the pond. The new fixtures will be dark-sky compliant long-lasting LED lighting. The new LED lighting will be dimmable and can be turned on/off and dimmed from a web-accessible app.

Refer to Appendix A – Lighting Audit for a detailed list of existing fixtures to be replaced with LEDs and for proposed lighting levels for both the ballfields and pond.

# Energy Conservation Measures

## **Savings Calculations**

The energy savings for this ECM are based on the installation of lower wattage/higher efficiency LED lighting retrofits that reduce lighting power consumption and, in some cases, reduce runtime hours via lighting controls. Hours of operation were determined through staff interviews and schedule observations.

A line-by-line list of the specific fixture retrofits and associated savings, by facility, by room is included in the 90% IGA Report submission.

Refer to Appendix A – Lighting Audit for savings detail.

## **Scope of Work**

Refer to Appendix A for the line-by-line summary of fixture retrofits, by facility and room.

The scope of work for this measure consists of the turn-key installation of the lighting lamps, retrofit kits and/or new fixtures listed in the line-by-line summary shown in Appendix A of the IGA Report.

## **Equipment Service Life**

The life expectancy of the new field lighting LEDs is 130,000 hrs. Refer to Cost-Weighted Life Expectancy table in Section 4.7.

## **Commissioning Plan**

Due to the straightforward nature of this ECM, inspections will be completed on a representative sample of fixtures by a McKinstry Site Superintendent. Typically, a minimum of the top 20% energy saving line items will be visually verified. A McKinstry commissioning agent will verify that the controls are functioning properly.

## **Measurement & Verification Plan**

Refer to Appendix C – MV Plan for Measurement and Verification plan details.

## **Training Plan**

Provide 2 hours of owner training total for all LED measures (interior, exterior and pole lighting) on proper operation and maintenance of LED lamps and fixtures including, but not limited to: replacement of LED lamps, operation, maintenance and troubleshooting of lighting occupancy sensors (if applicable) and pole lighting controls.

## **Warranty**

Due to the nature of the lighting retrofit project, the lighting warranty varies from the standard Energy Savings Performance Contract warranty. Once the warranty period is entered, the parts and material warranties for the lighting components will be transferred to the Owner who will be responsible for the labor to replace any lighting components (lamps, drivers, fixtures, etc.) covered under the warranties.

## **Post Installation Facility Impacts**

The longer life expectancy of LED lighting will significantly reduce the time, effort and cost associated with maintaining the City's lighting systems. Material O&M savings are currently accounted for in the cashflow, but the cost associated with the City's internal labor is not included despite the man hours saved being significant.

# Energy Conservation Measures

## 4.5.12. SOLAR PHOTOVOLTAICS

### Existing Conditions

The City would like to increase their renewable energy portfolio by adding solar photovoltaic (PV) systems to facilities with sufficient existing electrical use and roofs suited to accommodate the solar PV panels. The following facilities were identified as being good candidates for new solar PV systems.

- Gunnison Community Center: Existing roof age 2005 (not under warranty)
- City Shops: Existing roof age 1992 (not under warranty)
- Jorgensen Ice Arena: Existing roof age 1997 (not under warranty)
- Wastewater Treatment Plant: Existing roof age 1986 (not under warranty)
- Police Station: Existing roof age 2014 (not under warranty)

### Proposed Modifications

This measure consists of installing roof mounted solar PV systems on the roofs of the following facilities:

- Gunnison Community Center: Two 25 kW DC systems
- City Shops: 25 kW DC system
- Jorgensen Ice Arena: 25 kW DC system
- Wastewater Treatment Plant: 25 kW DC system
- Police Station: 25 kW DC system

System sizes are capped at 25 kW DC to avoid triggering a demand rate charge. Refer to Appendix I - Scopes of Work for additional details.

### Savings Calculations

Helioscope (Folsom Labs), a widely used solar energy production modeling software, was used to model the solar PV generation. Careful consideration of typical meteorological year (TMY) weather data sources and various efficiency losses like snow and dust soiling was taken to ensure accurate energy modeling was performed. Energy Toolbase, an industry leading software platform, was used to model utility cost savings. In Energy Toolbase, interval data was used as the baseline period profile and was modeled against the solar PV generation from Helioscope to determine kWh reduction. No demand reduction is included in the utility cost savings.

Refer to Appendix H – Savings Calculations for savings detail.

### Scope of Work

Refer to Appendix I - Scopes of Work for additional details.

### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

### Commissioning Plan

Commissioning for solar PV systems follows the standard commissioning process as outlined in Appendix L – Preliminary Commissioning Plan. Of significant note is that functional testing is accomplished as an entire system comparing available solar energy to the electrical production of the inverter. The angles, ambient temperature, and industry standard numbers for reflectance and emittance will be utilized to validate that the installed system can produce the designed power density.

# Energy Conservation Measures

## Measurement & Verification Plan

A one-time reading of panel power production will be measured at the inverter factoring in site conditions (solar irradiance, tilt, azimuth, shading & fouling) and then compared to manufacturer data at these conditions to verify the panels are operating according to published data. Refer to Appendix C for Measurement and Verification plan details.

## Training Plan

Provide 2 hours of owner training on solar PV system including inverters, panels and racking systems.

## Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## Post Installation Facility Impacts

The City will need to conduct annual Solar PV array inspections to ensure peak system production is maintained over the life of the system. McKinstry will provide the City with a list of preventative maintenance items to be conducted each year as part of the Owner Training program.

### 4.5.13. ASSESSMENT OF SOLAR THERMAL PANELS

#### Existing Conditions

The Gunnison Community Center is equipped with an existing solar thermal system.

#### Proposed Modifications

McKinstry will conduct a detailed condition assessment of the existing solar thermal system to determine the condition of the panels, piping, pumps, storage tanks, etc. Included in the assessment will be a condition rating, age of system, remaining life and replacement cost.

#### Savings Calculations

N/A

#### Scope of Work

McKinstry will conduct a detailed condition assessment of the existing solar thermal system to determine the condition of the panels, piping, pumps, storage tanks, etc. Included in the assessment will be a condition rating, age of system, remaining life and replacement cost.

#### Equipment Service Life

N/A

#### Commissioning Plan

N/A

#### Measurement & Verification Plan

N/A





# Energy Conservation Measures

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## **Training Plan**

N/A

## **Warranty**

N/A

## **Post Installation Facility Impacts**

N/A

### **4.5.14. NEW GENERATORS**

#### **Existing Conditions**

The Gunnison Community Center is a designated emergency shelter. It does not currently have any form of back-up generation in place to keep systems online in the event of a power outage. The City was donated a large back-up generator from a nearby mining company but the size of the generator far exceeds the required capacity of the facility and would require a load-bank in order to properly function during routine testing or a power outage.

#### **Proposed Modifications**

This measure consists of installing a pair of new back-up generators (one for the original section electrical service and one for the pool addition electrical service). The new generators will include pads, protective bollards and a fuel tank with 24 hours' worth of fuel. Refer to Appendix I – Statements of Work for additional details.

#### **Savings Calculations**

N/A

#### **Scope of Work**

Refer to Appendix I – Statements of Work for additional details.

#### **Equipment Service Life**

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

#### **Commissioning Plan**

Refer to Appendix L – Preliminary Commissioning Plan for commissioning details.

#### **Measurement & Verification Plan**

N/A

#### **Training Plan**

Provide 2 hours of owner training specific to the generators.

#### **Warranty**

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty

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# Energy Conservation Measures

provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## Post Installation Facility Impacts

Facility personnel will need to maintain the new equipment and associated systems. Operation and maintenance manuals will be included with closeout documentation.

### 4.5.15. AIR SEALING AND WEATHER STRIPPING

#### Existing Conditions

During a detailed survey of the building envelope assemblies, expansion cracks, small miscellaneous holes, gaps in ceiling and wall junctions, as well as worn or missing door weather strips in the exterior doors of the buildings were identified. Infiltration of unconditioned outside air results in uncomfortable drafts and unnecessary energy use.

#### Proposed Modifications

In general, this measure consists of replacing weather-stripping around man-doors, overhead doors and sealing gaps and cracks around windows and between roof-wall assemblies. Refer to Appendix I – Statements of Work for additional details. Numerous facilities are impacted by this scope of work. Refer to ECM Matrix in Section 4.1 to see which facilities are affected.

#### Savings Calculations

Non-Electric Heating Savings =  $(\text{Bldg. Leakage sq mtrs}) \times (\text{bldg k factor}) \times (\text{Wind P Factor}) \times (\text{HDD}) \times (9/5) \times 0.075 \times .243 \times 60 \times 24) / (100,000 \times \text{Eff \%})$ ,

Electrical Heating Savings =  $((\text{Bldg. Leakage sq mtrs}) \times (\text{bldg k factor}) \times (\text{Wind P Factor}) \times (\text{HDD}) \times (.075 \times .243 \times 60 \times 24) \times (\text{conversion to kwh})$

Cooling Savings =  $((\text{Bldg. Leakage sq mtrs}) \times (\text{bldg k factor}) \times (\text{Wind P Factor}) \times (\text{CDD}) \times (.075 \times .243 \times 60 \times 24) / \text{Cooling COP} \times (\text{conversion to kwh})$

Refer to Appendix H – Savings Calculations for Building K value, Wind P Factor, HDD and CDD for each facility.

#### Equipment Service Life

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

#### Commissioning Plan

N/A

#### Measurement & Verification Plan

Refer to Appendix C for Measurement and Verification plan details.

#### Training Plan

N/A

#### Warranty

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty

# Energy Conservation Measures

provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## **Post Installation Facility Impacts**

Facility personnel will need to maintain the new equipment and associated systems. Operation and maintenance manuals will be included with closeout documentation.

### **4.5.16. POOL WATER TREATMENT**

#### **Existing Conditions**

The Community Center aquatics staff utilizes chlorine as the primary form of pool water treatment. The staff must handle and mix concentrated liquid chlorine as part of this process and because they are limited to how much concentrated liquid chlorine they can store on-site, they must also transport it from an off-site location. Concentrated chlorine can be a safety hazard if not handled correctly and can cause numerous health issues when exposed to it in liquid or gaseous form.

#### **Proposed Modifications**

This measure consists of installing an onsite sodium hypochlorite (chlorine) generator that utilizes salt, water and electrolysis to generate the chlorine needed for the pool water treatment. Sodium hypochlorite generators produce pool chlorination chemicals from the electrochemical reaction between salt, water, and electricity. On-site production of chlorine as a solution of sodium hypochlorite alleviates the risks to public health and safety relating to the storage and transportation of hazardous acid and concentrated chlorine solutions. The only raw material, salt, is an inert, safe compound that is stored in a feeder on-site and used as required by the chlorine generator. On-site generation systems create a pH neutral chlorine allowing for a more stable, effective chlorine to treat your commercial pool or aquatic center. On-site hypochlorite is a dilute form of disinfectant compared to chlorine gas or concentrated commercial hypochlorite. The raw materials required by on-site generators are 75% to 90% cheaper than the annual cost of traditional chlorine and pool chemicals. On-site generation also allows for improved inactivation of microorganisms, increased water quality by reduced disinfection byproducts, and reduced threat to public safety. In addition, traditional chlorination methods result in large quantities of byproducts and impurities entering the pool, raising the TDS levels, and thus causing the pool system to add more freshwater to dilute the pool. On-site production of chlorine and injecting that chlorine directly into a pool greatly reduces a pool systems water loss. The salt used in the process is inert, safe to handle and larger quantities can be stored onsite.

This will greatly reduce the need for the aquatics staff to handle concentrated chlorine which would now only be required to "shock" the pool in the event of a biological contamination. Refer to Appendix I – Statements of Work for additional details.

#### **Savings Calculations**

The primary source of savings for this measure is a reduction in chemical costs but there are also savings associated with the reduction of water use and natural gas use. Refer to Appendix H – Savings Calculations for a detailed explanation of the savings.

#### **Scope of Work**

Refer to Appendix I – Statements of Work for additional details.

#### **Equipment Service Life**

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

# Energy Conservation Measures

## **Commissioning Plan**

Refer to Appendix L for Preliminary Commissioning Plan.

## **Measurement & Verification Plan**

Refer to Appendix C for Measurement and Verification plan details.

## **Training Plan**

Provide 2 hours of owner training total for the chlorine generator system

## **Warranty**

The workmanship and materials installed under this ECM will be covered under the standard 1-year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## **Post Installation Facility Impacts**

Facility personnel will need to maintain the new equipment and associated systems. Operation and maintenance manuals will be included with closeout documentation.

### **4.5.17. ELECTRIC VEHICLE CHARGING STATION**

#### **Existing Conditions**

At the time the audit was conducted, the City of Gunnison had a single level-2 electrical vehicle (EV) charging station located at City Hall. Through a separate project, the City added a pair of DC Fast-charge stations.

#### **Proposed Modifications**

This measure consists of adding another Level-2 EV charging station at the Gunnison Community Center. Refer to Appendix I – Statements of Work for additional details.

#### **Savings Calculations**

N/A - There are no savings associated with this measure. The electric penalty for this measure is based on the annual electrical consumption for a similar Level-2 EV Charging station that the City has at City Hall.

#### **Equipment Service Life**

Refer to Cost-Weighted Life Expectancy table in Section 4.7.

## **Commissioning Plan**

Refer to Appendix L for Preliminary Commissioning Plan.

## **Measurement & Verification Plan**

N/A - There are no savings associated with this measure.

## **Training Plan**

Provide 1 hours of owner training total for this measure.

# Energy Conservation Measures

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## **Warranty**

The workmanship and materials installed under this ECM will be covered under the standard 1year warranty provisions of the Energy Saving Performance Contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to the Owner at project closeout.

## **Post Installation Facility Impacts**

Facility personnel will need to maintain the new equipment and associated systems. Operation and maintenance manuals will be included with closeout documentation.

# Energy Conservation Measures

## 4.6. GENERAL EXCLUSIONS AND CLARIFICATIONS

The following General Exclusions and Clarifications are applicable to the project. ECM-specific exclusions and clarifications are listed at the end of the section.

### Pricing:

- Due to the market uncertainty surround material and equipment prices, McKinstry's price is valid through May 31<sup>st</sup>, 2023. McKinstry reserves the right to update the project pricing based on current labor, material and equipment costs should contract execution not occur before this date.
- Pricing excludes Davis-Bacon, Prevailing Wage and Build America Buy America (BABA) Act requirements.
- At the time this report was submitted, the details of the Inflation Reduction Act, Solar PV Direct Payment had not yet been finalized by the Federal Government so McKinstry cannot yet guarantee this value. Any shortfall in the final ITA Direct Payment amount is the responsibility of the City.
- At the time this report was submitted, the Department of Homeland Security, Emergency Management grant had not yet been submitted so the value of the grant shown in the Cash Flow cannot yet be guaranteed by McKinstry. Any shortfall in the final grant amount is the responsibility of the City.
- Pricing excludes State, County, City and any special use taxes.
- Bond Amount calculated at 50% of the Construction Cost
- Bond does not cover savings guarantee.

### Rebates:

- McKinstry has agreed to carry the risk associated with being responsible for the final value and collection of lighting rebate on the project. McKinstry will provide the necessary information to apply for the rebate and request assistance from the City if needed.

### Network & Remote Access:

- The City will be responsible for providing any network drops to support the Building Automation System, Solar PV installation and LED Field Lighting scopes of work. McKinstry has include the cost to pull the CAT6 wire from the existing switches to these locations but will need the City to provide the final terminations. Required ethernet connections shown below:
  - Community Center: 1 for Solar PV systems and 1 for the Building Automation System (most likely located in the upper-level mechanical room)
  - City Shop: 1 for the Solar PV system (near the electrical panels in the main shop.
  - WWTP: 1 for the Solar PV system (on the northeast side of the main office/lab building)
  - Police Department: 1 for the PV System (in the mechanical room on the east end of the building)
  - Ice Arena: 1 for the PV system (Near the main electrical panel on east side of the building near the fishing pond)
  - Jorgensen Sports Complex: 1 for the LED Field lighting (in Andy's office at the Ice Arena if possible)
- The City is responsible for providing remote access as required for access to the Solar PV systems and Building Automation Systems for trending, monitoring and M&V activities.

### Scheduled Shutdowns:

- McKinstry will provide a one-week notice for any heating, cooling, controls, or electrical related shutdowns required to complete the implementation of the scope measures listed in this document.

### Temporary Heating and Cooling Exclusion:

- Temporary heating and cooling are excluded from all scope items. Any measures that may impact occupant comfort will be timed and implemented in such a manner as to minimize the impact on interior space conditions, but McKinstry cannot guarantee a standard of comfort will be maintained during the entire construction period.



# Energy Conservation Measures

## **Commissioning-Specific Exclusions:**

- The following items are excluded from the Commissioning scope of work unless noted in the scope of work for each measure:
  - Existing HVAC systems that are not slated to be replaced as part of this project.
  - Existing building automation systems that are not slated to be replaced as part of this project.
  - Existing lighting control systems.
  - Fire protection and life safety systems.
  - Elevators.
  - Back-up generators and emergency power systems that are not associated with McKinstry's scope of work.
  - Electrical services/devices not associated with McKinstry Work.
  - Egress and/or emergency systems.

## **Lead and Asbestos Exclusions:**

- The current project scope does not include any testing or abatement of asbestos containing materials or surfaces with lead containing paint.

## **General Engineering and Construction Exclusions:**

- Future operation, maintenance and capital replacement costs
- All work to be conducted during normal business hours except for solar PV cutover and indoor lighting in occupied spaces which will be done after hours.
- McKinstry reserves the right to adjust energy savings if we find insufficient outside air quantities or inoperable equipment during design, construction, or commissioning.
- Seismic analysis, provisions, or bracing are excluded.
- Rectification of existing code violations, damage or deficiencies are excluded.

## **Solar Photovoltaic Exclusions & Clarifications**

- Solar photovoltaic (PV) system operation & maintenance is excluded.
- Inverters and modules have warranties that extend beyond the EPC warranty. These will be transferred to the customer at project closeout.
- Pricing for WWTP solar PV system based on there not being any hazardous materials in the soil.
- Solar PV cut-over to occur after normal business hours. McKinstry may require that the back-up generators at the Police Department and WWTP operate during the solar PV cut-over to make sure that any system in the facility that must remain online are able to operate while the PV system is tied into the building electrical system.
- Removal/Replacement of Solar PV Systems to accommodate future roof repairs/replacements is excluded.
- Weather: If damage from extreme weather events occurs during any performance period, McKinstry will not be responsible for the loss of energy production.
- If utility required curtailment of power/energy occurs during any performance period, McKinstry will not be responsible for the loss of energy production.
- If utility loss of power due to utility outage or customer caused outage occurs during any performance period, McKinstry will not be responsible for the loss of energy production.
- If vandalism or other unforeseeable accidents occur during any performance period, McKinstry will not be responsible for the loss of energy production.
- If a manufacturer becomes insolvent at any point and the equipment performance is negatively impacted, McKinstry is not responsible for the loss of energy production.

# Energy Conservation Measures

## Lighting Exclusions & Clarifications

- Lighting color temperature shall be 4000K.
- Existing field lighting poles are presumed to be in good condition, code compliant and suitable for new LED modules.
- Many of the lighting products have warranties that extend beyond the EPC warranty. These will be transferred to the customer at project closeout.
- 10-year warranty on field lighting
- Pond lighting pole foundation pricing based on 2000 psi soil conditions.
- Included is a 10% linear lamp holders (sockets) replacement allowance, \$1,000 max.
- Included is a 10% lens replacement allowance, \$2,500 max.
- Gunnison County Prevailing Wage Labor Rates are for the posted time period and subject to change as contracts are negotiated and renewed, or as tax rates change.
- Assumes access to spaces via hard keys, key FOBs, or other means of room access.
- Assumes reasonable access to all fixtures.
- Subcontractors will be required to carry Performance Bonds.
- McKinstry has included extra stock of 1% of lamp leave-behind.
- Subcontractor shall procure Electrical Permit where required.
- Temporary power and lighting.
- Trash removal from site is included.
- Daily trash and housekeeping clean-up is included.
- Recycling of lamps and ballasts is included.
- Storage of Material and Supplies is included.
- Scope includes 1-for-1 replacement of existing emergency battery backup units, where identified in audit, plus an additional (50) emergency battery backup unit allowance for audit discrepancies.
- Lighting Codes and Design Standards
  - Illuminating Engineering Society of North America (IESNA)
  - Federal Energy Management Program (FEMP) 80/20 Option A Plan.
- Lighting Exclusions
  - Future operation & maintenance costs
  - Electrical Permit fees (except for new electrical services)
  - Special insurance requirements per the specifications.
  - Professional liability insurance coverage.
  - Code updates or replacement of defective equipment associated with existing systems.
  - Unforeseen or hidden conditions.
  - CAD drawings/reflective ceiling plans/stamped electrical drawings.
  - Utility Company fees and charges.
  - Asbestos/leaking PCBs/Lead removal is not included in the quoted price above and will need to be removed by a qualified contractor if encountered.
  - Removal of construction waste to points beyond the immediate area of work.
  - Painting or refinishing of newly exposed surfaces, as a result of the lighting upgrades.
  - Costs of schedule delays or impacts.
  - Job site security.
  - Electrical plan review & associated fees.
  - Demolition services (make safe only).
  - New lens replacements past allowance.
  - New lamp holders (sockets) past allowance.
  - Repair or replacement of existing electrical circuitry and conduit.
  - Emergency battery backup units past allowance.
  - Modifications to dedicated emergency lighting system and circuits.
  - Modifications to emergency lighting units and remote heads.
  - Electrical repairs, replacement, rework or modifications beyond the initial fixture connection.
  - Additional stock of kits, new fixtures, and sensors.
  - Mock-up installation of lighting retrofits and lighting controls.

# Energy Conservation Measures

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- Egress lighting, unless integral to the fixture(s) with proposed upgrades.

## **Mechanical, Electrical, Plumbing and Controls Exclusions & Clarifications**

- Any warranties that extend beyond the EPC warranty will be transferred to the customer at project closeout.
- Generator pricing based two new generators, each serving a separate main electrical service (one for the original section and one for the pool addition), each of different voltages. Pricing based on acceptance of this design by the state inspector.
- Generator and EV Charging Station pricing based on there being no hazardous materials present in the soils where trenching, bollards and concrete pad earthwork is to occur.
- Piping, ductwork, and coils (condition, size, insulation, performance) beyond our point of connection are excluded. Based on our discussions with the client, there are no concerns with these items that we should be included in the scope of work.
- Harmonic filtration assessments, SCCR analysis, coordination, or provisions, are excluded.
- Equipment sub-meters, unless already incorporated into the piece of equipment.
- Surge protection engineering and devices, unless specifically noted as included, are excluded.
- Replacement of energy or electric sub-meters is excluded.
- The City will calibrate CO and CO2 sensors or replace the cartridges/elements at the manufacturer's recommended intervals to maintain proper operation after installation.

# Energy Conservation Measures

## 4.7.COST-WEIGHTED LIFE EXPECTANCY

Table 17: Cost-weighted Life Expectancy

Energy Conservation Measure <sup>(1)</sup>	Measure Description	Construction Cost <sup>(2)</sup>	Service Life <sup>(3) (4)</sup>	Weighted Service Life <sup>(5)</sup>	Notes
01.02 Replace Radiant Infrared Heaters	Replace existing radiant infrared heaters over the spectator seating area with new radiant heaters with burners and flue vents that are designed to prevent condensation from forming that could drip on spectators.	\$ 76,043	21.0	0.399	Burners - ASHRAE Equipment Life Expectancy Chart
01.03 Replace Standing Pilot Heaters	The standing pilot unit heater serving the Parts Area is an outdated technology that has reached its ASHRAE life expectancy. Replace heater with new gas-fired electronic ignition unit heater.	\$ 10,919	13.0	0.036	Gas Unit Heaters - ASHRAE Equipment Life Expectancy Chart
01.05 Expand Snow Melt System	Add snowmelt system at entrance of outdoor rink and entrance of Zamboni building. New boiler, pump and controls to be installed in Zamboni building.	\$ 109,175	25.0	0.683	Steel Fire-tube Boilers - ASHRAE Equipment Life Expectancy Chart
01.06 Add HVAC System w-Zone Controls and Duct Mods	The City Shop is remodeling the water shop into office area and as result the existing HVAC system is not properly sized to serve this area. Included is a new furnace split system, mods to existing ductwork, new ductwork for remodeled area and a zoning control system.	\$ 95,610	15.0	0.359	Residential Split Package - ASHRAE Equipment Life Expectancy Chart
03.02 Replace Make Up Air Unit	Replace problematic make-up air unit that serves the rink area at the Ice Arena.	\$ 212,811	18.0	0.958	Furnaces-Gas or Oil Fired - ASHRAE Equipment Life Expectancy Chart
04.01 Building Automation System	Install central BAS controls on HVAC systems and implement modern control strategies with best-in-class control sequences.	\$ 399,772	15.0	1.500	Controls Electronic - ASHRAE Equipment Life Expectancy Chart
04.05 Night Setback for Ice Machine	Turn off ice-making machine at night to reduce energy use.	\$ -	N/A	N/A	No equipment associated with this measure
05.01 Retro-Commissioning and TAB	Improve operation and efficiency of existing HVAC equipment and systems. Includes Test at Balance and allowance for ductwork repair.	\$ 33,950	N/A	N/A	No equipment associated with this measure
05.02 Recommissioning	Work with staff to re-commission the water treatment plant systems. Verify that the water treatment systems are operating per the original control narratives. Where current sequences deviate from original design, McKinstry will document these differences and work with the staff to determine the correct course of action.	\$ 46,215	N/A	N/A	No equipment associated with this measure
06.01 Address Ice Melt Humidity Issues from Zamboni	The humidity associated with melting the Zamboni ice shavings is creating condensation that is corroding the metal structure of the Zamboni building. This measure consists of installing a humidistat controlled exhaust fan and larger unit heater to reduce the humidity levels of this building.	\$ 38,470	19.0	0.183	Gas Unit Heaters and Centrifugal Fans - ASHRAE Equipment Life Expectancy Chart
09.01 LED Lighting Upgrades	Replace existing non-LED lamps/ fixtures with new LED lamps/ fixtures to reduce energy and maintenance costs. New exterior fixtures will be dark sky compliant. Stand-alone occupancy and daylight harvesting controls will be utilized where advantageous.	\$ 323,794	15.0	1.215	Calculated based on the L70 rated hours for each fixture type and the annual hours of operation.
09.02 Ballpark Lighting	Replace existing non-LED Softball field lighting with new dark-sky compliant LED field lighting and raise light levels to IES recommendations.	\$ 453,132	25.0	2.834	For the pole fixtures, the life expectancy of the lighting is calculated to exceed 50 years but in all likelihood, these fixtures will change before then so McKinstry has elected to use 25 years for the life expectancy
09.04 Pond LED Lighting Upgrades	Install new pole and dedicated fixtures to illuminate ice skating pond by Ice Arena.	\$ 33,000	25.0	0.206	
10.01 Solar PV	Install roof-mounted solar photovoltaic system, 25 kW DC total.	\$ 722,188	27.8	5.013	A cost weighted life expectancy was determined based on the following life expectancies and cost percentage breakdown: 15 yrs for inverters (15% of cost), 30 years for racks (35% of cost), 30 years for modules (50% of cost).
10.03 Assessment of Solar Panels	Conduct a detailed condition assessment of the existing solar thermal system to determine the condition of the panels, piping, pumps, storage tanks, etc. Included in the assessment will be a condition rating, age of system, remaining life and replacement cost.	\$ 6,000	N/A	N/A	No equipment associated with this measure
11.02 New Generators	Furnish and install two new generators (one for Original section electrical service and one for Pool Addition electrical service).	\$ 835,629	30.0	6.271	20 - 40 years depending on maintenance and routine operation
13.01 Air Sealing and Weather Stripping	Add weather-stripping, door seals and spray foam to better seal building envelope, reduce infiltration, reduce energy use and improve occupant comfort. This includes man doors as well as over-head vehicle doors.	\$ 169,506	41.6	1.762	A cost weighted life expectancy was determined based on the following life expectancies and cost percentage breakdown: 10 years for weather-stripping (30% of cost), 60 years for spray foam (70% of cost)
17.01 Pool Water Treatment	Replace existing pool water treatment system with new treatment system that utilizes on-site sodium hypochlorite (chlorine) generation via electrochemical reaction between salt and water. Greatly reduces the need to store, handle and mix concentrated hazardous pool chemicals.	\$ 388,730	14.0	1.361	
21.01 EV Charging Station- Level 2	Install level-2 electric vehicle charging station at Community Center.	\$ 42,476	10.0	0.106	
<b>Total Project Cost <sup>(6)</sup></b>		<b>\$ 3,997,420</b>			
<b>Estimated Utility Rebate</b>		<b>\$ (2,362)</b>			
<b>Up-front City Capital</b>		<b>\$ (914,175)</b>			
<b>DOLA Grant</b>		<b>\$ (749,521)</b>			
<b>Inflation Reduction Act - Direct Payment</b>		<b>\$ (232,003)</b>			
<b>Dept of Homeland Security - Emergency Mgmt Grant</b>		<b>\$ (84,000)</b>			
<b>Chart Ahead Colorado Grant</b>		<b>\$ (6,000)</b>			
<b>Net Financed Cost</b>		<b>\$ 2,009,359</b>			
<b>Cost Weighted Life Expectancy <sup>(7)</sup></b>			<b>22.9 years</b>		
<b>Financing Agreement Term <sup>(8)</sup></b>			<b>19.8</b>		

# Energy Conservation Measures

<b>Notes</b>
(1) Final Accepted List of Improvements
(2) Construction Cost as defined on the CEO Cost Estimating Tool.
(3) Service Life (indicate source of service life by ECM on the following table)
(4) Provide an abbreviation of the source, then below this table the source full name, date of publication, and any additional information necessary to confirm the value
(5) Formula: Cost of Improvement multiplied by Service Life then divided by Total Construction Cost
(6) Total Construction Cost per CEO Cost Estimating Tool
(7) Total of ECM/FIM Individual Average Service Life Values <i>Formula: Cost-Weighted Average Service Life = <math>\sum</math> each ECM <math>\div</math> total construction cost <math>\times</math> service life</i>
(8) Financing Agreement Term from final Principal Representative financing documents <b>(Section 24-30-2001(1)(d), C.R.S.</b> states that the maximum term of the payments shall be less than the Cost- Weighted Average Useful (service) Life of utility cost-savings equipment for which the contract is made, not to exceed 25 years)

Table 18: Service Life Supporting Tables - ASHRAE

ASHRAE Equipment Life Expectancy Chart					
Equipment Item	Median Years	Equipment Item	Median Years	Equipment Item	Median Years
Air Conditioners		Air terminals		Air-cooled condensers	20
Window Unit	10	Diffusers, grilles and registers	27	Evaporative condensers	20
Residential single or Split Package	15	Induction and fan coil units	20	Insulation	
Commercial through-the wall	15	VAV and double-duct boxes	20	Molded	20
Water-cooled package	15	Air washers	17	Blanket	24
Heat Pumps		Ductwork	30	Pumps	
Residential air-to-air	15	Dampers	20	Base-mounted	20
Commercial air-to-air	15	Fans		Pipe-mounted	10
Commercial water-to-air	19	Centrifugal	25	Sump and well	10
Roof-top air conditioners		Axial	20	Condensate	15
Single-zone	15	Propeller	15	Reciprocating engines	20
Multi-zone	15	Ventilating roof-mounted	20	Steam turbines	30
Boilers, hot water (steam)		Coils		Electric motors	18
Steel water-tube	24 (30)	DX, water, or steam	20	Motor starters	17
Steel fire-tube	25 (25)	Electric	15	Electric transformers	30
Cast iron	35 (30)	Heat Exchangers		Controls	
Electric	15	Shell-and-tube	24	Pneumatic	20
Burners	21	Reciprocating compressors	20	Electric	16
Furnaces		Packaged chillers		Electronic	15
Gas- or oil-fired	18	Reciprocating	20	Valve actuators	
Unit Heaters		Centrifugal	23	Hydraulic	15
Gas or electric	13	Absorption	23	Pneumatic	20
Hot water or steam	20	Cooling towers		Self-contained	10
Radiant Heaters		Galvanized metal	20		
Electric	10	Wood	20		
Hot water or steam	25	Ceramic	34		

# Energy Conservation Measures

Table 19: Service Life Supporting Tables – BOMA

System	Est. Life (Yrs) *
Exterior Structure	
A1010 Standard Foundations	100
A1020 Special Foundations	100
A1030 Slab on Grade	100
A2020 Basement Walls	100
B1010 Floor Construction	100
B1020 Roof Construction	100
B2010 Exterior Walls	100
B2020 Exterior Windows	25
B2030 Exterior Doors	25
B3010 Roof Coverings	15
B3020 Roof Openings	20
Interior Structure C1010 Partitions	40
C1020 Interior Doors	40
C1030 Fittings	40
C2010 Stair Construction	40
C3010 Wall Finishes	10
C3020 Floor Finishes	15
C3030 Ceiling Finishes	20
Conveying D1010 Elevators and Lifts	30
Plumbing D2010 Plumbing Fixtures	30
D2020 Domestic Water Distribution	30
D2030 Sanitary Waste	30
D2040 Rain Water Drainage	30
D2090 Other Plumbing Systems	30
HVAC D3010 Energy Supply	25
D3020 Heat Generating Systems	25
D3030 Cooling Generating Systems	25
D3040 HVAC Distribution Systems	25
D3050 Terminal & Package Units	25
D3060 HVAC Controls & Instrumentation	25
D3090 Other HVAC Systems/Equip	25
Life/Fire Safety D4010 Sprinklers	25
D4020 Standpipes	25
D4030 Fire Protection Specialties	25
D4090 Other Fire Protection Systems	25
Electrical D5010 Electrical Service/Dist.	30
D5020 Lighting and Branch Wiring	20
D5030 Communications and Security	10
D5090 Other Electrical Systems	30
Equipment E1010 Commercial Equip.	20
E1020 Institutional Equipment	20
E1030 Vehicular Equipment	20
E1090 Other Equipment	20
Life/Fire Safety D4010 Sprinklers	25
D4020 Standpipes	25
D4030 Fire Protection Specialties	25
D4090 Other Fire Protection Systems	25
Electrical D5010 Electrical Service/Dist.	30
D5020 Lighting and Branch Wiring	20
D5030 Communications and Security	10
D5090 Other Electrical Systems	30
Equipment E1010 Commercial Equip.	20
E1020 Institutional Equipment	20
E1030 Vehicular Equipment	20
E1090 Other Equipment	20
Furnishings E2010 Fixed Furnishings	15
E2020 Moveable Furnishings	15

\*Source BOMA 1996 System Group Life Renewal



# Energy Conservation Measures

## 4.8. MEASURES INVESTIGATED BUT NOT INCLUDED

The following is a list of measures that were investigated but are not included in the Recommended Scope for the Investment Grade Audit:

### **New LED Field Lighting for Soccer Fields at Jorgensen Sports Complex**

This measure is not being included due to the prioritization of other capital-intensive measures over this one. Because there is an energy penalty associated with this measure, it was not possible to pay for the cost within the target payback period. Included in this measure was four new poles, dark-sky compliant LED fixtures, lighting controls and all trenching, turf replacement, irrigation system repairs, dirt-work, concrete work, etc., required for the lighting installation.

### **Replace Make-up Air Unit at City Shop**

This measure is not being included due to the prioritization of other capital-intensive measures over this one. Due to the capital nature of this measure and low energy savings, it was not possible to pay for the cost within the target payback period. Included in this measure was the replacement of the existing make-up air unit with a larger make-up air unit (required for code compliance), the structural modifications to accommodate the larger unit, a new exhaust fan and controls.

### **Replace Wash-bay Heaters and Humidity Controls at City Shop**

This measure is not being included due to the prioritization of other capital-intensive measures over this one. Due to the capital nature of this measure and low energy savings, it was not possible to pay for the cost within the target payback period. Included in this measure was the replacement of the existing gas fired unit heaters with gas fired radiant tube heaters designed for operation in a car wash environment. Also included was new humidity controls, replacement of the motorized outside air louver and refurbishment of the exhaust fan serving this area.

### **Behavior Engagement Program**

This measure was eliminated from scope due to the bulk of the potential energy savings already being captured by other measures (Building Automation System at Community Center and re-commissioning at City Hall and the WWTP)

### **REALice Water Treatment System at Ice Arena**

This measure was eliminated from scope at the owner's request. This measure removes entrained air in the water service which would have eliminated the need to utilize hot water as part of the ice resurfacing process.

### **VFDs on Pool Water Circulation Pumps**

This measure was eliminated from scope because it was determined during the detailed investigation phase that there was not potential to reduce the flow rate of the pool water circulation pumps. The average pump flow rates were already at the target design flow rate.

### **Ground Source Heat Pumps at Community Center**

This measure is not being included due to the prioritization of other capital-intensive measures over this one. The energy savings for this measure were not great enough to pay for the cost within the target payback period. This measure included three water-to-water heat pumps, ground loop wells, pumps, piping and controls.

# Energy Conservation Measures

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## **Indoor Water Conservation**

This measure was eliminated from scope because a preliminary audit revealed that many of the plumbing fixtures and faucets were already low-flow fixtures.

## **Window Replacements**

This measure is not being included due to the prioritization of other capital-intensive measures over this one. The energy savings for this measure were not great enough to pay for the cost within the target payback period. This measure was eliminated from consideration at the Preliminary Energy Conservation Measure (ECM) discussion meeting so costs and savings were not developed.

## **Replace Non-LED Street Lights**

This measure was eliminated because the City already had plans in place to replace these fixtures.

## **Add Valve to Heater in Finance Office**

This measure was eliminated from consideration after the valve for the unit was found in the basement of City Hall.

## **Building Automation System at City Hall**

This measure was eliminated from scope due to the high cost relative to the savings it would generate. McKinstry recommends re-commissioning the systems at City Hall coupled with a Test and Balance effort to improve occupant comfort.

## **Replace Cooling Tower**

This measure was eliminated from consideration at the Preliminary ECM discussion meeting so costs and savings were not developed. Due to the capital nature of this measure and low energy savings, it was not possible to pay for the cost within the target payback period.

# Appendices

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## 5. Appendices

The following appendices are provided separately as part of the 100% Investment Grade Audit (IGA).

### **5.1. APPENDIX A – LIGHTING AUDIT**

Refer to “Gunnison 100% IGA Report-Appendix A - Lighting Audit” pdf document.

### **5.2. APPENDIX B – NOT USED**

Not Used

### **5.3. APPENDIX C – MEASUREMENT AND VERIFICATION PLAN**

Refer to “Gunnison 100% IGA Report-Appendix C - Measurement and Verification Plan” pdf document.

### **5.4. APPENDIX D – BASELINE UTILITY CONSUMPTION**

Refer to “Gunnison 100% IGA Report-Appendix D – Baseline Utility Consumption” pdf document.

### **5.5. APPENDIX E – IGA OWNER ACKNOWLEDGEMENT FORM**

Refer to “Gunnison 100% IGA Report-Appendix E – IGA Owner Acknowledgement Form” pdf document.

### **5.6. APPENDIX F – NOT USED**

Not Used

### **5.7. APPENDIX G – NOT USED**

Not Used

### **5.8. APPENDIX H – SAVINGS CALCULATIONS**

Refer to “Gunnison 100% IGA Report-Appendix H – Savings Calculations” pdf document.

### **5.9. APPENDIX I – STATEMENTS OF WORK**

Refer to “Gunnison 100% IGA Report-Appendix I - Statements of Work” pdf document.

### **5.10. APPENDIX J – NOT USED**

Not Used

### **5.11. APPENDIX K – REPORT COMMENTS AND RESPONSES**

Refer to “Gunnison 100% IGA Report-Appendix K - Report Comments and Responses” pdf document.

### **5.12. APPENDIX L – PRELIMINARY COMMISSIONING PLAN**

Refer to “Gunnison 100% IGA Report-Appendix L - Commissioning Plan” pdf document.

### **5.13. APPENDIX M – ELECTRONIC CALCULATIONS**

Refer to “Gunnison 100% IGA Report-Appendix M – Electronic Calculations” folder.

# REQUEST FOR BID

May 11, 2023



City of Gunnison, Colorado

\$2,400,000 <sup>†</sup>  
Lease Purchase Agreement  
2023

Northland Public Finance  
Loan Arranger



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<sup>†</sup> Preliminary; subject to change.

**PROPOSALS**

Please submit signed proposals representing a bid to loan or otherwise extend credit to the City of Gunnison, Colorado (the "City") for its proposed Lease Purchase Agreement financing, Series 2023 (the "Lease Purchase") on or before **2:00PM, Mountain Time, on Thursday, June 8, 2023.**

Please **email** proposal/bids to the attention of:

- Mr. Ben Cowan, Finance Director, City of Gunnison|bcowan@gunnisonco.gov
- Mr. Troy Bernberg, Managing Director, Northland Public Finance  
tbernberg@northlandsecurities.com

Award is expected by 4:00PM on Tuesday, June 13, 2023.

**FINANCING DETAILS**

The Lease Purchase is dated as of the date of delivery, expected to be on or about *Thursday, July 6, 2023*, and will bear interest from such dated date. This date is subject to change.

**Project:** Proceeds from the Lease Purchase will fund the construction and implementation of a series of energy efficiency improvements subject to an executed, state-approved, energy performance contract with McKinstry. The improvements (summarized in Appendix A) are varied and encompass a variety of City owned assets. McKinstry's 100% Investment Grade Audit is enclosed for reference.

**Interest:** The interest component of lease repayment shall be payable semi-annually on January 1 and July 1 respectively, commencing on January 1, 2024. Interest is calculated on a 30/360 basis.

**Principal & Term:** The principal component of lease repayment shall be payable semi-annually on January 1 and July 1 respectively, commencing on July 1, 2024. Principal is amortized to the projected annual cash flow savings shown in Table 12 in the enclosed McKinstry IGA Report. The preliminary amortization is shown below:

7/1/2024	\$358,977	1/1/2034	49,822
1/1/2025	7,425	7/1/2034	50,880
7/1/2025	7,582	1/1/2035	56,221
1/1/2026	10,937	7/1/2035	57,415
7/1/2026	11,169	1/1/2036	63,119
1/1/2027	16,577	7/1/2036	64,460
7/1/2027	16,929	1/1/2037	70,551
1/1/2028	20,268	7/1/2037	72,050
7/1/2028	20,698	1/1/2038	78,550
1/1/2029	24,272	7/1/2038	80,219
7/1/2029	24,787	1/1/2039	87,155
1/1/2030	28,613	7/1/2039	89,007
7/1/2030	29,220	1/1/2040	96,407
1/1/2031	33,312	7/1/2040	98,455
7/1/2031	34,020	1/1/2041	106,347
1/1/2032	38,396	7/1/2041	108,607
7/1/2032	39,211	1/1/2042	117,021
1/1/2033	43,889	7/1/2042	119,508
7/1/2033	44,822	1/1/2043	118,548

**Call/prepayment feature:** The City desires a prepayment feature that allows for future flexibility and ability to prepay principal in whole on or by December 1, 2028, and on any date thereafter.

**Security:** The Lease Purchase is payable with “any legally available” funds of the City. However, the projected annual energy savings are expected to be a source of lease repayment. Given some of the complexities collateralizing the improvements, the City is electing to substitute collateralize its police facility and City shop (detailed in Appendix D). A debt service reserve (DSR) is not anticipated at this time.

With two properties serving as leasehold collateral, the ordinance will have a collateral release provision. Principal paid in an amount equal to a property’s insured/replacement value would trigger this provision. Of the two assets serving as leasehold collateral, please indicate a preference for which asset becomes available for release.

**Purchaser/lender certificate:** Upon closing of the Lease Purchase, the successful bidder will be required to furnish a certificate or lender letter customary to direct lending of this nature.

**Tax-Exemption:** Kutak Rock LLP will provide an opinion that the interest on the Lease Purchase is excludable from gross income for federal income tax purposes and exempt from all taxation by the State of Colorado, subject to certain exceptions described in the opinion of bond counsel. The City will covenant to comply with the requirements of the Internal Revenue Code of 1986, as amended (the “Code”) to maintain the exclusion of interest from gross income for federal income tax purposes.

**Qualified Tax-Exempt Obligations:** The Lease Purchase will be designated as a "Qualified Tax-Exempt Obligation" as described in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

**Book Entry:** The Lease Purchase will not be a book-entry-eligible security.

**Paying Agent & Registration:** Principal and interest on the Lease Purchase shall be payable to the successful bidder by check or wire transfer directly by the City. The role of paying agent is not anticipated.

**CUSIP & DTC Eligibility:** The Lease Purchase is not DTC eligible and CUSIPS will not be assigned. The successful bidder is expected to hold such Lease Purchase to maturity or earlier redemption.

**No Rating:** The Lease Purchase is non-rated. The City’s 2007 Sales & Use Tax Revenue Bonds were rated “A” by Standard & Poor’s before a refinancing via direct lending in 2021.

**No Official Statement:** An official statement, or similar offering document will not be prepared.

**Award:** The successful bidder will be notified by or on Tuesday, June 13, 2023. Award goes to the bidder whose proposal the City determines to be in the best interest of the City. The City reserves the right to further negotiate any details of the Lease Purchase with the successful bidder/lender.

**Continuing Disclosure:** The City will not enter into a continuing disclosure undertaking with respect to the Lease Purchase.

**City Information:** Prospective bidders may access the City’s financials via the link provided below:  
[https://www.gunnisonco.gov/departments/finance/financial\\_reports\\_budgets.php#outer-1263](https://www.gunnisonco.gov/departments/finance/financial_reports_budgets.php#outer-1263)



**Upfront Costs:** The City shall be responsible for the cost of its bond counsel, loan arranger, and other customary fees related to lease purchase agreements. All other costs will be the responsibility of the awarded bidder unless otherwise noted in the bid.

**Pending Litigation:** The City is currently not involved in any litigation proceedings that would have any material adverse effect on the City's ability to repay the Lease Purchase.

**Outside Counsel:** If applicable, please identify bank counsel – name of attorney and firm - to review documents on your behalf and associated costs, if any.

**Further Information:** Please do not contact the City under any circumstances. Additional information and inquiries regarding the Lease Purchase may be directed to:

Mr. Troy Bernberg, Managing Director-Public Finance  
Northland Securities, Inc.  
(303) 641-4878 | [tbernberg@northlandsecurities.com](mailto:tbernberg@northlandsecurities.com)

**Right to Reject, Waive and Negotiate:** The City reserves the right to reject any and all proposals, to waive defects, informalities, and minor irregularities in proposals or in the receipt of proposals, to select the proposal deemed to be in the best interests of the City and to negotiate with the selected institution.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

APPENDIX A - Energy Performance Contract - Implementation Program

This project offers a solution that will provide excellent long-term value and advances the goals identified by the City. The project includes the following facility improvement measures:

Comprehensive Facility LED Upgrades

Replacement of Softball Field lighting with dark-sky compliant LED lighting

Solar photovoltaic systems on 5 facilities totaling 150 kW

Building Automation System for the Community Center

New back-up generators for the Community Center

Level 2 Electric Vehicle (EV) charging station at Community Center

On-site Chlorine Generation system at the Community Center

Building Envelope measures (air sealing and weatherstripping)

Recommissioning and Test & Balance at City Hall

Recommissioning of the WWTP

Condition Assessment of the Solar Thermal panels at the Community Center

Humidity Control System for Zamboni Building at Ice Arena

Night setback operation for Ice Arena ice-making machine

Replacement of the main indoor Ice Arena make-up air unit

Replacement of the infrared radiant heaters at the Indoor Ice Arena

New snow-melt system for the Zamboni entrance to the Outdoor Ice Arena

Furnace split-system with zoning-system for remodeled areas of City Shops

Replacement of standing-pilot unit heater at the City Shops

APPENDIX B – Description of Leasehold Collateral

The Police/Dispatch Building was constructed in 2014 with a total of 6,266 sf in size and houses the Police Department and Dispatch. Site address: 910 W. Bidwell Ave., Gunnison, CO 81230



The City Shop was constructed in 1992 and is 9,491 sf in size. The building houses Public Works, Electric and Water department offices, the fleet maintenance shop, parts warehouse and miscellaneous other spaces. Site address: 1100 W. Virginia Ave., Gunnison, CO 81230



**ORDINANCE NO. 7  
SERIES 2023**

**AN ORDINANCE OF THE CITY OF GUNNISON, COLORADO, APPROVING A LEASE PURCHASE FINANCING TO PROVIDE FUNDS TO FINANCE UTILITY COST-SAVINGS MEASURES AND FACILITY IMPROVEMENT MEASURES AND, IN CONNECTION THEREWITH, AUTHORIZING AND APPROVING A SITE LEASE, A LEASE PURCHASE AGREEMENT AND OTHER DOCUMENTATION RELATING TO THE FINANCING; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE FINANCING.**

**WHEREAS**, the City of Gunnison, Colorado, is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (the “Charter”); and

**WHEREAS**, pursuant to Section 1.2 of the Charter, the City has the power to purchase, receive, hold and enjoy, or sell and dispose of real and personal property; and

**WHEREAS**, pursuant to Section 8.9 of the Charter, the City Council of the City (the “Council”) may, by ordinance, without the necessity of a vote of the registered electorate, enter into a rental or leasehold agreement that may provide for payment thereof by general appropriation levy and the obligation to pay such rental or leasehold cost shall not be construed to be part of the Charter’s limitation on indebtedness; and

**WHEREAS**, McKinstry Essention, LLC, a full-service design, build, operate and maintain firm (“Energy Performance Contractor”), has conducted an investment grade audit for the City analyzing certain utility cost savings measures and facility improvement measures, including but not limited to, new generators, installing a roof-mounted solar photovoltaic system, ballpark lighting replacement with LEDs, installing central building automated systems on HVAC systems, facility LED lighting upgrades and replacing the existing pool water treatment system and has presented to the Council an Energy Performance Contract to provide for such measures (collectively, the “Project”); and

**WHEREAS**, the Council has determined it is in the best interests of the City and its inhabitants that the City finance the Project through the long-term lease and leaseback, subject to annual appropriation, of (i) the Police/Dispatch Building, located in the City at 910 W. Bidwell Avenue, and (ii) the City Shop, located in the City at 1100 W. Virginia Avenue (collectively, the “Leased Property”, all as more specifically described in the Site Lease and Lease Agreement defined hereafter); and

**WHEREAS**, Northland Securities, Inc., acting as bank solicitor for the City, has assisted the City in requesting bids or proposals from banks or similar financial institutions to act as lender (the “Lender”) for the proposed lease financing (as described below, the “Lease Financing”), which bids or proposals are to be received prior to the adoption of this Ordinance; and

**WHEREAS**, under the Lease Financing, the City shall convey a long-term leasehold interest in the Leased Property to the Lender pursuant to a Site Lease (the “Site Lease”) between

the City, as lessor, and the Lender, as lessee, for a lump sum payment made by the Lender to the City (the "Lender Payment Amount"), and thereafter, pursuant to a Lease Purchase Agreement (the "Lease Agreement"), lease back the Leased Property from the Lender over a period which does not to exceed 25 years (which period will not exceed the useful life of the Leased Property); and

**WHEREAS**, the Lease Agreement is to expire on December 31 of any City fiscal year (each a "Fiscal Year") if the Council has, by such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Lease Agreement) and Additional Rentals (as defined in the Lease Agreement) estimated to be payable in the next ensuing Fiscal Year, and such Base Rentals and Additional Rentals payable by the City shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (as defined in the Lease Agreement) beyond the Fiscal Year for which such payments have been appropriated; and

**WHEREAS**, prior to final reading of this Ordinance, there has been presented to the Council forms of the documents authorized by this Ordinance, including the Site Lease and the Lease Agreement; and

**WHEREAS**, the Council desires to authorize and otherwise proceed with the Lease Financing.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, THAT:**

**Section 1. Authorization of Leasehold Conveyance Pursuant to Site Lease.** The Council hereby approves the conveyance to the Lender of the leasehold interest in the Leased Property in exchange for the Lender Payment Amount, which shall not exceed an aggregate principal amount of \$2,500,000. The duration of the Site Lease shall not extend beyond December 31, 2058. The Council determines and declares that the amount of the Lender Payment Amount represents fair and adequate consideration to the City for the sale and conveyance of the leasehold interest in the Leased Property.

**Section 2. Document Authorization.** The Site Lease and the Lease Agreement, in substantially the form and with substantially the same content as the form thereof made available to the Council, are in all respects approved, authorized and confirmed, and the Mayor is authorized and directed to execute the following documents in substantially the same form and with substantially the same content as presented to the Council, for and on behalf of the City, but with such changes therein as the Mayor may deem necessary or appropriate, as evidenced by the execution thereof the Site Lease and the Lease Agreement.

**Section 3. Parameters Relating to Lease Financing.** The Base Rentals, as set forth in the Lease Agreement, shall not exceed \$500,000 in any Fiscal Year and shall not be payable for a period which is greater than 22 years following the current Fiscal Year. The aggregate amount of the Base Rentals payable under the Lease Agreement shall not exceed a total of \$4,300,000. The net effective interest rate for the Lease Financing shall not exceed a

rate of 5.50% per annum, except in the event of a determination of taxability, as provided in the Lease Agreement.

**Section 4. Tax-Exempt Qualification.** The City hereby designates the Lease Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986 (the “Code”), as amended, in that the Lease Agreement is not a “private activity bond” as defined in the Code and the reasonably anticipated amount of “qualified tax exempt obligations” to be issued by the City (including all subordinate entities of the City) for the calendar year 2023 will not exceed \$10,000,000.

**Section 5. Execution of Miscellaneous Documents.** The City Clerk or, in the absence thereof, the designee of the City Clerk, is hereby authorized and directed to attest all signatures and acts of any official of the Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Site Lease and the Lease Agreement and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Mayor, the Finance Director and other officials, employees and agents of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional agreements (including, if necessary, an escrow agreement), certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance. Any action authorized by this Ordinance to be taken by the Mayor may, in the absence of the Mayor, be taken by the Mayor Pro-Tem.

**Section 6. Obligations of the City.** No provision of this Ordinance, the Site Lease or the Lease Agreement shall be construed as creating or constituting a general obligation or multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor a mandatory payment obligation of the City in any ensuing Fiscal Year beyond any Fiscal Year during which the Lease Agreement shall be in effect. The term of the Lease Agreement shall not extend beyond one year, subject to annual renewal, and the City shall have no obligation to make any payment except in connection with the payment of the Base Rentals and Additional Rentals in accordance with the provisions of the Lease Agreement.

**Section 7. Declarations and Findings.** The Council hereby determines and declares that the Base Rentals represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease Agreement) represents the fair purchase price of the Leased Property. The Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease Agreement or to exercise its option to purchase the Leased Property pursuant to the Lease Agreement. In making such determinations, the Council has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing or equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Leased Property pursuant to the terms and provisions of the Lease Agreement, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. The Council hereby determines and declares that the leasing of the Leased



Property pursuant to the Lease Agreement will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed, by the City other than pursuant to the Lease Agreement. The Council hereby determines and declares that the duration of the Lease Agreement, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property.

**Section 8. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or by the officers and employees of the City directed toward the Lease Financing for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 9. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 10. Repealer.** All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 11. Effective Date; Recording and Authentication.** This Ordinance shall be in full force and effect upon adoption. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the City Clerk, and shall be published in accordance with law and Section 6.3 of the Charter.

**INTRODUCED, READ, PASSED AND ORDERED PUBLISHED** the 23rd day of May, 2023, on first reading, and introduced, read, and adopted on second and final reading this 13th day of June, 2023.

\_\_\_\_\_  
Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
City Clerk

Published by Title in the  
Gunnison Country Times Newspaper  
June 1, 2023

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, Colorado 80202  
Attention: Thomas M. Peltz, Esq.

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**LEASE PURCHASE AGREEMENT**

between

**[LENDER],**  
as Lessor,

and

**CITY OF GUNNISON, COLORADO,**  
as Lessee

Dated as of \_\_\_\_\_, 2023

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## LEASE PURCHASE AGREEMENT

**THIS LEASE PURCHASE AGREEMENT** dated as of \_\_\_\_\_, 2023 (this “Lease”), between [LENDER] (the “Lender”), as lessor, and **CITY OF GUNNISON, COLORADO** (the “City”), a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado (the “State”) and the Charter of the City (the “Charter”), as lessee.

### WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State and the Charter; and

WHEREAS, pursuant to Section 1.2 of the Charter, the City has the power to purchase, receive, hold and enjoy, or sell and dispose of real and personal property; and

WHEREAS, pursuant to Section 8.9 of the Charter, the City Council of the City (the “Council”) may, by ordinance, without the necessity of a vote of the registered electorate, enter into a rental or leasehold agreement that may provide for payment thereof by general appropriation levy and the obligation to pay such rental or leasehold cost shall not be construed to be part of the Charter’s limitation on indebtedness; and

WHEREAS, the Council has determined it is in the best interests of the City and its inhabitants that the City or the purpose of financing certain utility cost savings measures and facility improvement measures, including but not limited to, new generators, installing a roof-mounted solar photovoltaic system, ballpark lighting replacement with LEDs, installing central building automated systems on HVAC, facility LED lighting upgrades and replacing the existing pool water treatment system (collectively, the “Project”); and

WHEREAS, in order to generate moneys to finance the Project, the Council has determined that the City shall enter into that certain Site Lease, dated as of the date of this Lease, pursuant to which the City is to convey a leasehold interest in the land and improvements, as described in Exhibit A hereto, for a lump-sum payment, and sublease such property back from the Lender pursuant to the term and provisions of this Lease; and

WHEREAS, pursuant to the Site Lease, the City has leased the Leased Property to the Lender; and

WHEREAS, the obligation of the City to pay Base Rentals and Additional Rentals (both as hereinafter defined) hereunder shall be from year-to-year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or a multiple-Fiscal Year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing Fiscal Year beyond any Fiscal Year during which this Lease shall be in effect; and



WHEREAS, the funding of the Project and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Council by an ordinance finally passed and adopted by the Council;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Terms Defined in Preamble and Recitals.** The following terms shall have the meanings set forth in the preamble and recitals hereto: City; Charter; Council; Lease; Lender; Project; and State.

**Section 1.02. Additional Definitions.** The following additional terms shall have the meanings specified below:

*“Additional Rentals”* means the cost of all (a) reasonable expenses and fees of the Lender related to the performance of the provisions of this Lease or otherwise incurred at the request of the City, (b) taxes, if any, insurance premiums, utility charges, maintenance, upkeep, repair, improvement and replacement in respect of the Leased Property, and (c) all other charges and costs (together with all interest and penalties that may accrue thereon) in the event that the City shall fail to pay the same, as specifically set forth herein which the City assumes or agrees to pay hereunder. Additional Rentals do not include Base Rentals.

*“Annual Compliance Certificate”* means the Annual Compliance Certificate, a form of which is attached hereto as Exhibit D.

*“Authorized Officer of the City”* means the Finance Director of the City, the Mayor of the City or any person authorized by resolution or ordinance of the Council to perform any act or execute any document.

*“Base Rentals”* means the payments payable by the City during the Lease Term pursuant to Section 6.02 of this Lease and as set forth in Exhibit B, as it may be amended hereunder from time to time, which constitute the payments payable by the City for and in consideration of the right to use the Leased Property during the Lease Term. In the event that Exhibit B sets forth separate schedules of Base Rentals payable with respect to one or more separate portions of the Leased Property, such payments will be combined for purposes of Section 6.02, but may be treated as separate schedules for other purposes of this Lease.

*“Base Rental Payment Dates”* means semi-annual payments occurring on each [June 1 and December 1, commencing on December 1, 2023].

*“Business Day”* means any day other than a Saturday, a Sunday or a day on which banks in New York, New York or Denver, Colorado are authorized by law to remain closed.

“*Counsel*” means an attorney at law or law firm (who may be counsel for the Lender or the City) who is satisfactory to both the City and the Lender.

“*Determination of Taxability*” has the meaning set forth in Section 6.04 hereof.

“*Event of Default*” means one or more events of default as defined in Section 13.01 of this Lease.

“*Event of Nonappropriation*” means a termination of this Lease by the City, determined by the City’s failure for any reason, to duly enact by the last day of each Fiscal Year an appropriation ordinance for the ensuing Fiscal Year which includes (a) by specific line item reference amounts authorized and directed to be used to pay all Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, as provided in Section 6.06 of this Lease. The term also means notice under Section 4.01 of this Lease of the City’s intention to terminate and an event described in Section 6.06 of this Lease relating to the failure by the City to appropriate amounts due as Additional Rentals in excess of the amounts estimated to become due.

“*Fiscal Year*” means the fiscal or budget year of the City.

“*Force Majeure*” means, without limitation, the following, acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the City; provided, however, that the COVID-19 pandemic shall not be considered an event of force majeure.

“*Hazardous Substance*” means any hazardous substance, pollutant or contaminant, as such terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., and any applicable State law or regulations promulgated under either.

“*Insurance Consultant*” means an independent person or firm acceptable to the City experienced in providing the specific type of insurance in question and capable of making an evaluation of the actuarial risk of loss from the types of events customarily covered by such insurance policies.

“*Lease Remedy*” or “*Lease Remedies*” means any or all remedial steps provided in Section 13.02 of this Lease whenever an Event of Default hereunder has happened and is continuing.

“*Lease Term*” means the time during which the City is the lessee of the Leased Property under this Lease, including the Original Term and all Renewal Terms as provided in and subject to Article IV and Sections 6.01, 6.02 and 6.05 of this Lease; certain provisions of this Lease survive the termination of the Lease Term, as provided in Section 4.02 of this Lease.

“*Leased Property*” means the property described in Exhibit A attached hereto.

“*Net Proceeds*” when used with respect to any performance or payment bond proceeds, or proceeds of insurance, including self-insurance, required by this Lease, or proceeds from any condemnation award, or any proceeds resulting from default or breaches of warranty under any contract relating to the Leased Property or proceeds from any Lease Remedy, means the amount remaining after deducting from such proceeds (a) all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds or award; and (b) all other fees, expenses and payments due to the Lender.

“*Original Term*” means the portion of the Lease Term that terminates on December 31, 2023.

“*Opinion of Counsel*” means a written opinion of Counsel.

“*Permitted Encumbrances*” means, as of any particular time, those encumbrances included as Exhibit B to the Site Lease.

“*Purchase Option Price*” means the amount payable, at the option of the City, for the purpose of terminating this Lease with respect to the Leased Property and purchasing the Leased Property pursuant to Article XI of this Lease, which amount shall be the amounts identified in Exhibit C hereto as the Purchase Option Price.

“*Renewal Term*” means any optional renewal of the Lease Term for the next Fiscal Year by the City, as provided in Article IV of this Lease.

“*Revenues*” means (a) all amounts payable by or on behalf of the City with respect to the Leased Property pursuant to this Lease including, but not limited to, all Base Rentals, Purchase Option Prices and Net Proceeds, but not including Additional Rentals; and (b) all other revenues derived from this Lease, excluding Additional Rentals.

“*Site Lease*” means the Site Lease dated of even date herewith, whereby the City conveys to the Lender a leasehold interest in real property upon which the Leased Property is located and title and a legal interest in the existing improvement thereon.

“*Taxable Rate*” means [\_\_\_\_\_] %.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.01. Representations, Covenants and Warranties of the City.** The City represents, covenants and warrants as follows:

(a) The City is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State and the Charter.

(b) Pursuant to the Site Lease, the City has leased the Leased Property to the Lender.

(c) The City is authorized, under the Charter, to lease the Leased Property from the Lender and to execute, deliver and perform its obligations under this Lease.

(d) The lease of the Leased Property from the Lender pursuant to this Lease serves a public purpose and is in the best interests of the City and the residents of the City.

(e) The execution, delivery and performance of this Lease by the City has been duly authorized by the City.

(f) This Lease is enforceable against the City in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(g) The execution, delivery and performance of the terms of this Lease by the City does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Lease or the Site Lease, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the City.

(h) There is no litigation or proceeding pending or to the best of its knowledge threatened against the City or any other Person affecting the right of the City to execute, deliver or perform its obligations of the City under this Lease.

(i) The City will recognize economic and other benefits by the leasing of the Leased Property pursuant to this Lease and the City expects that the Leased Property will adequately serve the needs for which it is being leased throughout the Scheduled Lease Term.

(j) The Base Rentals payable in each Fiscal Year during the Lease Term are not more than the fair value of the use of the Leased Property during such Fiscal Year. The Base Rentals and Additional Rentals payable in each Fiscal Year during the Lease Term do not exceed a reasonable amount so as to place the City under an economic compulsion (i) to continue this Lease beyond any Fiscal Year, (ii) not to exercise its right to terminate this Lease at any time through an Event of Nonappropriation or (iii) to exercise any of its options to purchase the Leased Property hereunder. The Purchase Option Price is the City's best estimate of the fair purchase price of the Leased Property at the time of exercise of the City's option to purchase the Leased Property by paying the Purchase Option Price. The Scheduled Lease Term does not exceed the weighted

average useful life of the Improvements or any other real property improvements currently located on the Leased Property. The period from the beginning of the Lease Term through the date on which each item of Equipment is to be released from this Lease does not exceed the remaining useful life of such item of Equipment. In making the representations, covenants and warranties set forth above in this subsection, the City has given due consideration to the Project, the purposes for which the Leased Property will be used by the City, the benefits to the City from the use of the Leased Property, the City's options to purchase the Leased Property hereunder and the terms of this Lease governing the use of, and the City's options to purchase, the Leased Property.

(k) The City presently intends and expects to continue this Lease annually until title to the Leased Property is acquired by the City pursuant to this Lease; but this representation does not obligate or otherwise bind the City.

(l) The City is not aware of any current violation of any requirement of law or the presence of any Hazardous Substance relating to the Leased Property.

(m) The City has appropriated sufficient moneys in its General Fund to pay the Base Rentals payable in the current Fiscal Year and the Additional Rentals estimated to be payable in the current Fiscal Year.

(n) To the best of the City's knowledge, the real property on which the Leased Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(o) The City is the owner in fee of title to the real property on which the Leased Property is located. No lien or encumbrance on the property materially impairs the City's use of the real property on which the Leased Property is located for the purposes for which they are, or may reasonably be expected to be, held.

(p) The City shall maintain and provide upon request by the Lender an inventory of all furniture, fixtures and equipment that make up part of the Leased Property.

**Section 2.02. Representations, Covenants and Warranties of the Lender.** The Lender represents, covenants and warrants as follows:

(a) The Lender has all requisite power to acquire legal interests in the Leased Property and to execute, deliver, enter into and perform the transactions contemplated by this Lease and the Site Lease and to carry out its obligations under this Lease and the Site Lease, and has duly executed and delivered this Lease and all other documents related to this Lease.

(b) Except as specifically provided in this Lease, the Lender will not pledge or assign its right, title and interest in and to any of its rights under this Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to and under this Lease or the Leased Property, except for Permitted Encumbrances.

(c) Neither the execution and delivery of this Lease or the Site Lease nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound, or constitutes a default under any of the foregoing.

(d) Except as specifically provided in this Lease and the Site Lease, the Lender will not assign its duties and obligations under this Lease or the Site Lease to any other person, firm or Lender, so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

(e) There is no litigation or proceeding pending or threatened against the Lender or any other person affecting the right of the Lender to execute this Lease or the Site Lease and to perform its obligations hereunder and thereunder.

(f) The Lender acknowledges that the Base Rentals and Additional Rentals hereunder during the Original Term and all of the Renewal Terms, if any, shall be paid from then currently budgeted expenditures of the City, using any legally available funds of the City. The City's obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the City's annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.05 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple Fiscal Year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. This Lease shall not directly or indirectly obligate the City to make any payments of Base Rentals or Additional Rentals beyond the funds legally available to the City for its then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from any class or source of moneys of the City. The Lender further acknowledges that the City may elect not to renew this Lease by failure to budget and appropriate funds sufficient to meet its next Fiscal Year's Base Rentals and Additional Rentals, and that the acts of budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the Council.

### **ARTICLE III**

#### **LEASE OF LEASED PROPERTY**

The Lender demises and leases the Leased Property, including any interest in the Leased Property, to the City, and the City leases the Leased Property, including any interest in the



Leased Property, from the Lender, in accordance with the provisions of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

## **ARTICLE IV**

### **LEASE TERM**

**Section 4.01. Duration of Lease Term; City's Annual Right to Renew Lease.** The Lease Term shall commence as of the date hereof and continue through the last day of the current Fiscal Year of the City. Subject to the provisions of Section 4.02 hereof, the Lease Term may be renewed at the end of the Original Term and at the end of each renewal term thereafter for a term of twelve months coinciding with the next succeeding Fiscal Year of the City. The City shall have the right to annually renew the Lease Term unless (a) the City gives written notice to the Lender not less than 30 days prior to the end of the Original Term or the then current Renewal Term of the City's intention not to renew this Lease at the end of the Original Term or the then current Renewal Term, or (b) an Event of Nonappropriation shall have occurred with respect to a Renewal Term occurring after the Original Term or any then current Renewal Term. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except for the amount of Base Rentals and Additional Rentals to be paid during such Renewal Term. The Lease Term, including the Original Term and all Renewal Terms, does not exceed the weighted average useful life of the Leased Property or the Project.

Except as otherwise provided in Section 4.02 hereof, the exercise of the City's annual option to renew this Lease shall be conclusively determined by whether or not the Council has, on or before the last day of each Fiscal Year, duly enacted an appropriation ordinance for the ensuing Fiscal Year which includes (a) by specific line item reference sufficient amounts authorized and directed to be used to pay all the Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, all as further provided in Section 6.06 of this Lease. The officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the annual budget proposals submitted to the Council, items for all payments required under this Lease for the ensuing Fiscal Year, until such time (if any) as the Council may determine to renew or not to renew this Lease; it being the intention of the Council that any decision to renew or not to renew this Lease shall be made solely by the Council and not by any other official of the City.

**Section 4.02. Termination of Lease Term.** The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the last day of any Fiscal Year during which there has occurred an Event of Nonappropriation pursuant to Section 4.01 and Article VI of this Lease (provided that the Lease Term will be deemed to have been renewed and, therefore, not terminated if the Event of Nonappropriation is cured as provided in Section 6.05 hereof); or
- (b) the conveyance of all of the Leased Property to the City upon payment of the Purchase Option Price or all Base Rentals and Additional Rentals as provided in Section 11.02(a) and (b) of this Lease; or

(c) an Event of Default and termination of this Lease under Article XIII of this Lease.

An election not to renew the Lease Term shall terminate all unaccrued obligations of the City under this Lease, and shall terminate the City's rights of possession under this Lease at the end of the last day of the Fiscal Year for which this Lease shall be in effect (except to the extent of the holdover provisions of Section 13.02(d)(i) hereof, and except for any conveyance pursuant to Article XI of this Lease). Except for an event described in subparagraph (b) above, upon termination of this Lease, the City agrees to peaceful delivery of the Leased Property to the Lender or its assigns.

## ARTICLE V

### ENJOYMENT OF LEASED PROPERTY

**Section 5.01. Lender's Covenant of Quiet Enjoyment.** The Lender hereby covenants that the City shall during the Lease Term peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Lender, except as expressly required or permitted by this Lease. The Lender shall, at the request of the City and at the cost of the City, join and cooperate fully in any legal action in which the City asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the City may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property and shall be joined in any action affecting its liabilities hereunder. Notwithstanding the foregoing or anything to the contrary herein, the Lender shall have the right to litigate its own interests under this Lease as it deems necessary.

The City also hereby consents to the inspection by the Lender of all books, accounts and records maintained by the City with respect to the Leased Property and this Lease.

**Section 5.02. City's Need for the Leased Property; Determinations as to Fair Value and Fair Purchase Price.** The City has determined and hereby determines that it has a current need for the Leased Property. It is the present intention and expectation of the City that this Lease will be renewed annually until the Lender's interests in the Site Lease are released and unencumbered title to the Leased Property is acquired by the City pursuant to this Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City. The City has determined and hereby determines that the Base Rentals under this Lease during the Lease Term for the Leased Property represent the fair value of the use of the Leased Property and that the Purchase Option Price for the Leased Property will represent the fair purchase price of the Lender's leasehold interest in the Leased Property at the time of the exercise of the option. The City has determined and hereby determines that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew this Lease or to exercise its option to purchase the Lender's leasehold interest in the Leased Property hereunder. In making such determinations, the City has given consideration to the estimated current value of the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefit to the citizens and inhabitants of the City by reason of the use and occupancy of the Leased Property pursuant to the terms and provisions of this Lease, the City's

option to purchase the Lender's leasehold interest in the Leased Property and the expected eventual vesting of unencumbered title to the Leased Property in the City. The City hereby determines and declares that the period during which the City has an option to purchase the Lender's leasehold interest in the Leased Property (i.e., the entire maximum Lease Term for the Leased Property) does not exceed the weighted average useful life of the Leased Property.

## **ARTICLE VI**

### **PAYMENTS BY THE CITY**

**Section 6.01. Payments to Be Paid from Currently Budgeted Expenditures of the City.** The City and the Lender acknowledge and agree that the Base Rentals and Additional Rentals hereunder during the Original Term and all of the Renewal Terms, if any, shall be paid from then currently budgeted expenditures of the City, using any legally available funds of the City. The City's obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the City's annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.05 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-Fiscal Year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. This Lease shall not directly or indirectly obligate the City to make any payments of Base Rentals or Additional Rentals beyond the funds legally available to the City for its then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from any class or source of moneys of the City.

### **Section 6.02. Base Rentals and Additional Rentals.**

(a) The City shall pay all Base Rentals directly to the Lender during the Original Term and all Renewal Terms, on the Base Rental Payment Dates and in the "Total Base Rentals" amounts set forth in Exhibit B, attached hereto and made a part hereof, as it may be amended from time to time hereunder.

(b) The City may, on [\_\_\_\_\_, 20\_\_] or any date thereafter, pay the then-applicable Purchase Option Price related to the Leased Property for the purpose of terminating this Lease and purchasing the Leased Property shown on Exhibit A, as further provided in Article XI of this Lease. The City shall give the Lender notice of its intention to exercise its option not less than thirty (30) days in advance of the date of exercise and shall deposit with the Lender on or prior to an Interest Payment Date an amount equal to the Purchase Option Price.

The City shall pay Additional Rentals during the Original Term and all Renewal Terms, if any, as herein provided. All Additional Rentals shall be paid by the City on a timely basis directly to the person or entity to which such Additional Rentals are owed.

**Section 6.03. Interest Component.** A portion of each payment of Base Rentals is paid as, and represents payment of, interest, and Exhibit B hereto, as may be amended from time to time hereunder, sets forth the interest component of each payment of Base Rentals. Interest shall be calculated at a fixed rate of \_\_\_\_% on a 30/360 basis, consisting of twelve 30-day months.

**Section 6.04. Manner of Payment.** The Base Rentals and, if paid, the Purchase Option Price, shall be paid by the City by certified funds or other method of payment acceptable to the Lender in lawful money of the United States of America directly to the Lender at its address provided in Section 14.02 hereof. The obligation of the City to pay the Base Rentals and Additional Rentals, during the Original Term and each Renewal Term, shall be absolute and unconditional, payable from all legally available sources, and payment of the Base Rentals and Additional Rentals shall not be abated through accident or unforeseen circumstances, or for any other reason, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Property, commercial frustration of purpose, or failure of the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the City's obligation to make payments hereunder as set forth in Section 6.01 above, and further subject to the City's rights under Section 8.04 hereof. Notwithstanding any dispute between the City and Lender, the City shall, during the Original Term and all Renewal Terms, make all payments of Base Rentals and Additional Rentals when due and shall not withhold any Base Rentals or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Section 8.04 hereof with respect to certain Additional Rentals), nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Lender shall affect the City's obligation to pay all Base Rentals and Additional Rentals (except to the extent provided by Section 8.04 hereof with respect to certain Additional Rentals), during the Lease Term.

If the City or the Lender receives notice, in any form, from the Internal Revenue Service: (a) that the interest from this Lease is not excludable from federal gross income, or (b) that this Lease is not a qualified tax exempt obligation within the meaning of Section 265(b)(3) of the Code due to an act or omission of the City (a "Determination of Taxability"), then the City shall pay to the Lender, within thirty (30) days after the City or the Lender receives notification of such determination, the amount which, with respect to interest previously paid, will restore to the Lender interest thereon at the Taxable Rate. Additionally, the City agrees that upon the occurrence of such a Determination of Taxability, it shall thereafter pay interest on this Lease at the rate of interest equal to the Taxable Rate, notwithstanding any other provision of this Lease that may be to the contrary. Notwithstanding any provisions to the contrary contained herein, the Lender nor any subsequent successor shall not be required to present the Lease to the City to receive payment of principal of and interest thereon.

**Section 6.05. Nonappropriation.** In the event that the Council shall not specifically budget and appropriate, on or before the last day of each Fiscal Year, moneys to pay all Base Rentals and the reasonably estimated Additional Rentals coming due for the next ensuing Fiscal Year as provided in Section 4.01 hereof and this Article, an Event of Nonappropriation shall be deemed to have occurred, subject, however, to each of the following provisions:

(a) The Lender shall declare an Event of Nonappropriation on any earlier date on which the Lender receives specific written notice from the City that this Lease will be terminated.

(b) Absent such notice from the City, the Lender shall give written notice to the City of any Event of Nonappropriation declared by the Lender following the Lender's receipt of the City's adopted budget for such Fiscal Year; but any failure of the Lender to give such written notice shall not prevent the Lender from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Lender.

(c) The Lender shall waive any Event of Nonappropriation which is cured by the City, within ten days of the giving of notice by the Lender as provided in (b) above, by inclusion in a duly enacted appropriation ordinance, (i) by specific line item, amounts authorized and directed to be used to pay all Base Rentals and (ii) sufficient amounts to pay reasonably estimated Additional Rentals coming due for such Fiscal Year.

In the event that during any Fiscal Year, any Additional Rentals shall become due which were not included in a duly enacted appropriation ordinance then, in the event that moneys are not specifically budgeted and appropriated to pay such Additional Rentals within 45 days subsequent to the date upon which such Additional Rentals are due, an Event of Nonappropriation shall be deemed to have occurred, upon notice by the Lender to the City to such effect (subject to waiver by the Lender as hereinbefore provided).

Notwithstanding any provision to the contrary herein, if an Event of Nonappropriation occurs, the City's rights of possession of the Leased Property under this Lease shall terminate at the end of the last day of the Fiscal Year for which this Lease shall be in effect, and the City shall not be obligated to make payment of the Base Rentals, Additional Rentals or any other payments provided for herein which accrue after the end of the last day of the Fiscal Year for which this Lease shall be in effect; provided, however, that, subject to the limitations of Sections 6.01 and 14.03 hereof, the City shall continue to be liable for Base Rentals and Additional Rentals allocable to any period during which the City shall continue to occupy, use or retain possession of the Leased Property, beginning with the first day of the Fiscal Year in respect of which the Event of Nonappropriation occurs. The City shall in all events vacate or surrender possession of the Leased Property by the tenth Business Day of the Fiscal Year in respect of which the Event of Nonappropriation has occurred.

After the tenth Business Day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred, the Lender may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Lender upon the termination of this Lease by

reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Lender, shall be held by the Lender.

## **ARTICLE VII**

### **TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES**

**Section 7.01. Fee Interest in the Leased Property.** Fee interest in the Leased Property shall remain in the City, subject to the Site Lease and this Lease.

Except as expressly set forth in this Lease or the Site Lease, the City shall have no right or interest in the Leased Property or any additions and modifications thereto or replacements thereof.

**Section 7.02. No Encumbrance, Mortgage or Pledge of Leased Property.** Except as may be permitted by this Lease, the City shall not permit any mechanic's or other lien to remain against the Leased Property; provided that, if the City shall first notify the Lender of the intention of the City to do so, the City may in good faith contest any mechanic's or other lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom if the City shall notify the Lender that, in the Opinion of Counsel, by nonpayment of any such items the Lender's title to or interest in the Leased Property will not be materially endangered, or the Leased Property or any part thereof will not be subject to loss or forfeiture, otherwise the City shall promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The Lender will cooperate fully with the City in any such contest, upon the request and at the expense of the City. Except as may be permitted by this Lease, the Lender shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, except Permitted Encumbrances. The City and the Lender shall promptly, at their own respective expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

## **ARTICLE VIII**

### **MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES**

**Section 8.01. Maintenance of the Leased Property by the City.** The City agrees that at all times during the Lease Term the City will maintain, preserve and keep all portions of the Leased Property or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, and that the City will from time to time make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 9.02 and 10.03 of this Lease. The Lender shall not have any responsibility for such maintenance or repairs or for the making of any additions, modifications or replacements to the Leased Property.



**Section 8.02. Modification of the Leased Property, Installation of Furnishings and Machinery of the City.** The City shall have the privilege of making substitutions, additions, modifications and improvements to any portion of the Leased Property, at its own cost and expense; and the same shall be the property of the Lender and, subject to this Lease, shall be included under the terms of this Lease and the Site Lease; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Leased Property or cause the Leased Property to be used for purposes other than lawful governmental or proprietary functions of the City (except to the extent of subleasing permitted under Section 12.01 hereof); and provided that the Leased Property, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, shall be of a value not less than the value of the Leased Property immediately prior to making such substitutions, additions, modifications and improvements.

The City may also, from time to time in its sole discretion and at its own expense, install machinery, equipment, and other tangible personal property in or on any Leased Property. All such machinery, equipment, and other tangible personal property shall remain the sole property of the City in which the Lender shall have not any interests; provided, however, that title to any such machinery, equipment, and other tangible personal property which becomes permanently affixed to any Leased Property shall be in the name of the Lender and shall be included under the terms of this Lease, in the event the Lender shall reasonably determine that such Leased Property would be materially damaged or impaired by the removal of such machinery, equipment, or other tangible personal property.

**Section 8.03. Reserved.**

**Section 8.04. Taxes, Other Governmental Charges and Utility Charges.** In the event that the Leased Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the City shall pay the amount of all such taxes, assessments and governmental charges when due, as Additional Rentals. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Rentals only for such installments as are required to be paid during the upcoming Fiscal Year. Except for Permitted Encumbrances, the City shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Leased Property or any portion thereof (including, without limitation, any taxes levied upon the Leased Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Leased Property or any portion thereof, or any interest therein, including the interest of the Lender), or the rentals and revenues derived therefrom or hereunder. The City shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Leased Property.

**Section 8.05. Provisions Regarding Liability, Property and Worker's Compensation Insurance.** Upon the delivery and acceptance of the Leased Property as provided in this Lease, the City shall, at its own expense, cause casualty and property insurance to be carried and maintained with respect to the Leased Property in an amount equal to the lesser of the next succeeding Purchase Option Price or the maximum insurable value of the Leased Property. Such insurance policy may have a deductible clause in an amount not to exceed \$25,000 or such

greater amount as is approved in writing by the Lender. With the prior written consent of the Lender, the City may, in its discretion, insure the Leased Property under blanket insurance policies which insure not only the Leased Property, but other property as well, as long as such blanket insurance policies otherwise comply with the requirements hereof. Any property damage insurance policy required by this Section 8.05 shall be so written or endorsed as to show the Lender, as loss payee and/or additional insured, and to make losses exceeding \$25,000, if any, payable to the City and the Lender, as their respective interests may appear.

Upon the execution and delivery of this Lease, the City shall, at its own expense, cause public liability insurance, including blanket contractual liability or specific contractual liability insurance for this Lease and public officials' errors and omissions coverage, to be carried and maintained with respect to the activities to be undertaken by the City and its officers, officials, agents and employees in connection with the use and possession of the Leased Property. All such policies (other than errors and omissions) shall show the City and all officers and employees thereof, and the Lender as additional insureds. Such coverage shall be in amounts not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act as the same may from time to time be amended, to a \$1,000,000 annual aggregate, for claims to which the defense of sovereign immunity applies. The public liability insurance required by this Section 8.05 may be by blanket insurance policy or policies.

If, at any time during the term of this Lease, it is determined that any part of the Leased Property is located in a flood zone, as determined in accordance with 12 CFR Chapter 1, Part 22 or its successor (the "Flood Insurance Regulations"), the City, at its own expense, shall obtain and maintain for the entire term of this Lease flood insurance covering the Leased Property in such form and amount as is required under the Flood Insurance Regulations. If at any time during the term of this Lease, the City shall fail to maintain such adequate flood insurance, the Lender may, to the extent permitted by law, purchase such insurance on the City's behalf, and the cost thereof shall be deemed an Additional Rental payable by the City as provided in Section 6.04 of this Lease. The City shall provide evidence of the renewal or replacement of such flood insurance at least 15 days prior to its expiration.

If the City shall insure against similar risks by self-insurance, the City, at its election and in accordance with the standards of the State relating thereto, may in lieu of obtaining policies for casualty and property, and public liability insurance coverage as required by this Section 8.05 provide one or more such coverages by a self-insurance fund so long as the City provides an annual certification to the Lender that the reserves therein are adequate as determined by, in the case of public liability and workers' compensation insurance, the City's risk manager or Insurance Consultant. Insurance required by Section 8.03 may not be met by self-insurance.

Each property and liability insurance policy provided for in this Section 8.05 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Lender without first giving written notice thereof to the Lender at least 30 days in advance of such cancellation or modification. In the event that the City has received such notice of cancellation or modification, it shall immediately furnish to the Lender a new insurance policy or certificate evidencing such policy replacing the cancelled or modified policy and effective on or before the effective date of such cancellation or modification.

The City shall, at its own expense and at the direction of the Lender, cause a policy of title insurance to be procured, insuring the Lender's leasehold interest under the Site Lease, in the amount equal to Lender Rental Payment (as defined in the Site Lease), on the standard ALTA forms, subject only to such exceptions as will be acceptable to the Lender, with such endorsements and affirmative coverages as may be reasonably required by the Lender, and otherwise in form and substance satisfactory to the Lender and issued by a company acceptable to the Lender and authorized to issue such insurance in the State.

The City shall provide certified copies of all insurance policies required under this Section 8.05 or certificates of insurance with appropriate endorsements attached evidencing, that the Lender has been named as loss payee and/or additional insured and that the sixty-day notice of cancellation provision is in effect. A certificate of insurance will be acceptable evidence of insurance at closing, with the understanding that the City shall furnish the policy or endorsements within 45 days after closing. No agent or employee of the City shall have the power to adjust or settle any loss with respect to the Leased Property, whether or not covered by insurance, without the prior written consent of the Lender; except that losses not exceeding \$25,000 may be adjusted or settled by the City without the Lender's consent. The consent of the Lender shall not be required for any such adjustment or settlement.

**Section 8.06. Granting of Easements.** As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the Lender shall at any time or times, but only upon the request of the City, grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property or rights included in this Lease, free from this Lease and any security interest or other encumbrance created hereunder or thereunder, and the Lender shall release existing easements, licenses, rights-of-way, and other rights and privileges with respect to such property or rights, with or without consideration, and shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other grant or privilege upon receipt of: (a) a copy of the instrument of grant or release; (b) a written application signed by an Authorized Officer of the City requesting such instrument and stating that such grant or release will not adversely affect the rental value of the Leased Property, impair the effective use of the Leased Property or interfere with the operation of the Leased Property; and (c) an opinion of Bond Counsel stating that such grant or release will not have an adverse effect on the excludability from federal income taxation on interest payments due under this Lease.

## **ARTICLE IX**

### **DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**Section 9.01. Damage, Destruction and Condemnation.** If, during the Lease Term (a) the Leased Property or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty; or (b) title to, or the temporary or permanent use of, the Leased Property or any portion thereof or the estate of the City or the Lender in the Leased Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental

authority; or (c) a breach of warranty or a material defect in the construction, manufacture or design of the Leased Property shall become apparent; or (d) title to or the use of all or any portion of the Leased Property shall be lost by reason of a defect in title thereto; then the City shall be obligated to continue to pay the amounts specified in Section 6.02 of this Lease (subject to Section 6.01 hereof).

**Section 9.02. Obligation of the City to Repair and Replace the Leased Property.**

The City and, to the extent such Net Proceeds are within their control, the Lender, shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards to be deposited in a separate trust fund held by the Lender. Subject to the receipt of the certificate required by the preceding sentence, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Leased Property by the City upon receipt of requisitions acceptable to the Lender signed by an Authorized Officer of the City stating with respect to each payment to be made; (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

**Section 9.03. Insufficiency of Net Proceeds.** If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property required under Section 9.02 of this Lease, the City may elect to:

(a) complete the work or replace such Leased Property (or portion thereof) with similar property of a value equal to or in excess of such Leased Property or portion thereof and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the City are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this Section 9.03(a), the City shall not be entitled to any reimbursement therefor from the Lender, nor shall the City be entitled to any diminution of the Base Rentals and Additional Rentals payable under Section 6.02 of this Lease; or

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article XI of this Lease. In the event of an insufficiency of the Net Proceeds for such purpose, the City shall, subject to the limitations of Section 6.01 hereof, pay such amounts as may be necessary to equal that portion of the Purchase Option Price which is attributed to the Leased Property for which the Net Proceeds have been received (as certified to the Lender by the City); and in the event the Net Proceeds shall exceed such portion of the Purchase Option Price, such excess shall be retained by the City; or

(c) if the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b) above, the Lender may retain and apply the Net Proceeds against the Purchase Option Price, and an Event of Nonappropriation will be deemed to

have occurred and, subject to the City's right to cure, the Lender may pursue remedies available to it following an Event of Nonappropriation.

The above referenced election shall be made by the City within 30 days of the occurrence of an event specified in Section 9.01 of this Lease.

If the City elects to replace the Leased Property with similar property pursuant to subparagraph (a) above, the City shall give notice thereof to Lender prior to such substitution.

**Section 9.04. Cooperation of the Lender.** At the expense of the City, the City shall cooperate fully with the Lender in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 9.01 of this Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof and in the enforcement of all warranties relating to the Leased Property. In no event shall the Lender voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any portion thereof without the written consent of the City.

**Section 9.05. Condemnation by the City.** The City agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to all or any portion of the Leased Property, the fair market value of the condemned portion of the Leased Property shall be not less than the Purchase Option Price.

## **ARTICLE X**

### **DISCLAIMER OF WARRANTIES; OTHER COVENANTS**

**Section 10.01. Disclaimer of Warranties.** THE LENDER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY. THE CITY HEREBY ACKNOWLEDGES AND DECLARES THAT THE CITY IS SOLELY RESPONSIBLE FOR THE USE, CONSTRUCTION, IMPROVEMENT, EQUIPPING, MAINTENANCE AND OPERATION OF THE LEASED PROPERTY, AND THAT THE LENDER DOES NOT HAVE ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the City to discharge such responsibility, the Lender constitutes and appoints the City as its attorney in fact for the purpose of constructing, improving, equipping, maintaining and operating the Leased Property, and asserting and enforcing, at the sole cost and expense of the City, all constructor's or manufacturer's warranties and guaranties, express or implied, with respect to the Leased Property, as well as any claims or rights the Lender may have in respect of the Leased Property against any manufacturer, supplier, contractor or other person. The Lender has not participated and will not participate in the design or construction of any buildings or improvements located at or on the Leased Property, and will not undertake any such activities during the Lease Term. In no event shall the Lender be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the

existence, furnishing, functioning or use by the City of any item, product or service provided for herein.

**Section 10.02. Further Assurances and Corrective Instruments.** The Lender and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

**Section 10.03. Compliance with Requirements.** During the Lease Term, the City and the Lender shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, provided that the City, the Lender may contest or appeal such orders so long as they are in compliance with such orders during the contest or appeal period, and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

**Section 10.04. Tax Covenant.** The City will not use or permit others to use the Leased Property in a manner that would cause the interest component of the Base Rentals to be included in gross income for federal income tax purposes or to be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except, with respect to corporations, as such interest is required to be taken into account in determining “adjusted net book income” for the purpose of computing the alternative minimum tax imposed on such corporations). In the event of a Determination of Taxability, the City shall pay interest hereunder at the Taxable Rate as provided in Section 6.04 hereof. The City will strictly comply with all covenants and directives contained in the Tax Compliance Certificate.

**Section 10.05. Immunity and Indemnification.** In the exercise of the powers of the Lender by its employees and agents under this Lease, including (without limiting the foregoing) the application of moneys and the investment of funds, the Lender shall not be accountable to the City for any action taken or omitted with respect to this Lease by it or its employees and agents reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred under this Lease. The Lender and its employees and agents shall be protected in its or their actions taken in reliance upon any paper or documents believed by it or them to be genuine and consistent with their rights or powers under this Lease, and it or they may conclusively rely upon the advice of Counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims based on this Lease against any employee or agent of the Lender alleging personal liability on the part of such person.

Subject to the limitations of Section 6.01 hereof and to the fullest extent permitted by law, the City shall indemnify the Lender and any of its employees or agents and save them harmless against any liability resulting from acts or omissions of the City in connection with any acts taken pursuant to this Lease as it relates to the City and the Leased Property. To the fullest extent permitted by law, the City shall also indemnify the Lender and its employees or agents against all claims arising from: (a) the conduct, management, operation or use of, or from any work or thing done on, the Leased Property during the Lease Term; (b) any condition of the Leased Property; and (c) any act of negligence of the City or of any of its agents, contractors or



employees or any violation of law by the City or breach of any covenant or warranty by the City hereunder. To the fullest extent permitted by law, the City shall indemnify and save the Lender and its employees and agents harmless from any such claim arising as aforesaid or in connection with any action or proceeding brought thereon and, upon notice from the Lender or any of its employees or agents, shall defend the Lender and its employees and agents in any such action or proceeding, and in any such action, the City shall assert on the Lender's behalf the defense that the City, and not the Lender, is the sole "landowner" of the Leased Property within the meaning of Colorado Revised Statutes § 13-21-115.

Subject to Section 10.08 hereof, notwithstanding anything to contrary herein, nothing in this Section 10.05 or otherwise contained in this Lease shall be construed in any way or applied in any manner as a compromise or waiver of the City's rights and protections under the Colorado Governmental Immunity Act.

**Section 10.06. Access to Leased Property.** The City agrees that the Lender, and any authorized representative of such parties, shall have the right at all reasonable times to examine and inspect the Leased Property and all of the City's books and records with respect thereto. The City further agrees that the Lender, and any such representative shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the City to perform its obligations under this Lease; provided however that Lender shall have no responsibility for maintenance or repair of the Leased Property or any improvements thereon.

**Section 10.07. Annual Budgets and Audited Financial Statements.** The City shall provide its annual budget to the Lender, annually, within 15 days of the Council's adoption of such annual budget. Additionally, the City shall provide its audited financial statements to the Lender, annually, within 15 days of their acceptance by the Council. The City shall use its best efforts to provide such audited financial statements to be delivered to the Lender no later than seven months after the close of the City's Fiscal Year. If the City's budget and/or audited financial statements are publicly available on the City's website or on the Electronic Municipal Market Access website maintained by the Municipal Securities Rulemaking Board at no cost, expense or registration on the part of the Lender, the requirement to provide the budget and/or audited financial statements to the Lender will be satisfied if the City emails a link to the posted item to the Lender within the period stated herein. The electronic budget, audit or link may be sent to the following email address (or such other address as the Lender supplies to the City in writing): [\_\_\_\_\_].

**Section 10.08. Environmental Covenant.** The City shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Leased Property in violation of any federal or State environmental regulation, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any federal or State environmental regulation, shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable environmental regulations, shall not install or permit to be installed any underground

storage tank therein or thereunder in violation of any environmental regulation and shall comply with all other environmental regulations which are applicable to the Leased Property.

Subject to the limitations of Section 6.01 hereof, in the event any Hazardous Substance is found upon, under, over or from the Leased Property in violation of any applicable environmental regulation or if any lien or claim for lien in favor of any governmental entity or agency as a result of any release of any Hazardous Substance is threatened, the City, at its sole cost and expense, shall, within ten days of such finding, deliver written notice thereof to the Lender and shall promptly remove such Hazardous Substances and prevent the imposition of any liens against the Leased Property for the cleanup of any Hazardous Substances. Such removal shall be conducted and completed in compliance with all applicable federal, State and local laws, regulations, rules, ordinances and policies in accordance with the orders and directives of all federal, state and local governmental authorities.

The City further agrees to reimburse the Lender, to the fullest extent permitted by law, for any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Lender in any action against or involving the Lender, resulting from any breach of the foregoing covenants or the representations and warranties in Section 2.01(e) hereof, or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Leased Property.

The representations and warranties in Section 2.01(e) hereof and the covenants of this Section 10.08 shall be deemed to be for the benefit of the Lender and any successors and assigns of the Lender.

**Section 10.09. Bank Qualification.** The City reasonably expects that the total amount of "tax exempt obligations" within the meaning of Section 265 of the Internal Revenue Code of 1986, as amended (the "Code") to be issued by it during the calendar year 2023, including its obligations under this Lease, will not exceed \$10,000,000. Accordingly, the City has designated this Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b) of the Code.

## ARTICLE XI

### PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

**Section 11.01. Purchase Option.** On [\_\_\_\_\_, 20\_\_] and any date thereafter, the City shall have the option to purchase the Leased Property and terminate this Lease, but only if it is not then in default under this Lease. The City may exercise its option by complying with one of the conditions set forth in Section 11.02. The City shall give the Lender notice of its intention to exercise its option not less than thirty (30) days in advance of the date of exercise. If the City shall have given notice to the Lender of its intention to purchase the Leased Property, but shall not have deposited the amounts with the Lender on the date specified in such notice, the City shall continue to pay Base Rentals as if no such notice had been given.

**Section 11.02. Conveyance of the Leased Property.** The Lender shall transfer and convey the Leased Property to the City in the manner provided for in Section 11.03 of this Lease; provided, however, that prior to such transfer and conveyance, either:

(a) the City shall have paid the then applicable Purchase Option Price as set forth in Exhibit C; or

(b) an Event of Default shall not have occurred and be continuing and the City shall have paid all Base Rentals set forth in Exhibit B hereto and all then current Additional Rentals required to be paid hereunder, in which case the Lender shall transfer and convey the Leased Property to the City.

The City is hereby granted the option to terminate this Lease and to purchase the Leased Property upon payment by the City of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the release of the Leased Property shown on Exhibit A subject to this Lease if the City has fulfilled all payment obligations with respect hereto and is not then in default hereunder.

**Section 11.03. Manner of Conveyance.** At the closing of any purchase or other conveyance of the Leased Property pursuant to Section 11.02 of this Lease, the Lender shall execute and deliver to the City such bills of sale and other necessary documents assigning, transferring and conveying good and marketable title to the Leased Property, as they then exist, subject to the following: (a) Permitted Encumbrances, other than this Lease; (b) all liens, encumbrances and restrictions created or suffered to exist by the Lender as required or permitted by this Lease or arising as a result of any action taken or omitted to be taken by the Lender as required or permitted by this Lease; and (c) any lien or encumbrance created by action of the City.

## **ARTICLE XII**

### **ASSIGNMENT, SUBLEASING AND USE BY CITY**

**Section 12.01. Assignment and Subleasing of the Lease.** This Lease may not be assigned by the City for any reason other than to a successor by operation of law. However, the Leased Property may be subleased to any other person or entity, as a whole or in part, by the City, subject, however, to each of the following conditions:

(a) this Lease, and the obligations of the City hereunder, shall, at all times during the Lease Term remain obligations of the City subject to Section 6.01 of this Lease, and the City shall maintain its obligations to the Lender, notwithstanding any sublease;

(b) the City shall furnish or cause to be furnished to the Lender a copy of any sublease agreement;

(c) prior to execution of the sublease, receipt by the Lender of an opinion of reputable bond counsel that such sublease by the City shall not violate the Constitution or laws of the State; and

(d) prior to execution of the sublease, receipt by the Lender of an opinion of reputable bond counsel that such sublease by the City shall not have an adverse effect on the excludability from federal income taxation on interest payments due under this Lease.

For purposes of this Section 12.01, the temporary use of the Leased Property under the City's community use of facilities policies or similar procedures shall not constitute an assignment or subletting in violation of this section.

## **ARTICLE XIII**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 13.01. Events of Default Defined.** Any one of the following shall be an “Event of Default” under this Lease:

(a) failure by the City to pay any Base Rentals or Additional Rentals during the Lease Term after the same becomes due;

(b) failure by the City to vacate or surrender possession of the Leased Property by the tenth Business Day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred;

(c) failure by the City to carry any insurance required under Section 8.05, and failure to cure within 10 days after written notice given to the City by the Lender, specifying such failure and requesting that it be remedied;

(d) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder or under any certificates executed and delivered by the City in connection with the execution and delivery of this Lease, other than as referred to in (a), (b) or (c), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied shall be given to the City by the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Lender shall not withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected. Such consent by the Lender shall not be unreasonably withheld; or

(e) the City (i) files a petition or application seeking reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of the State or (ii) is the subject of such a petition or application which is not contested by the City, or otherwise dismissed or discharged, within 30 days.

The foregoing provisions of this Section 13.01 are subject to the following limitations: (a) the City shall be obligated to pay the Base Rentals and Additional Rentals only during the Original Term or current Renewal Term, except as otherwise expressly provided in this Lease; and (b) if, by reason of Force Majeure, the City shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the City contained in Article VI of this Lease, the City shall not be deemed in default during the continuance of such inability. The City agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City from carrying out its agreement;

provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

**Section 13.02. Remedies on Default.** Whenever any Event of Default referred to in Section 13.01 of this Lease shall have happened and be continuing, the Lender may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Lender may terminate the Lease Term and give notice to the City to vacate and surrender possession of the Leased Property within ten Business Days of such notice; and pursue Judgment for Possession and a Writ of Restitution under Colorado Revised Statutes § 13-40-101 et seq. if possession is not timely surrendered.

(b) The Lender may proceed to foreclose through the courts on or otherwise sell, trade-in, repossess or liquidate the City's interest in the Leased Property, or any part thereof in any lawful manner; provided, however, that the Lender may not recover from the City any deficiency which may exist following the liquidation of the City's interest in the Leased Property in excess of Base Rentals and Additional Rentals for the then current Fiscal Year and in excess of amounts payable under subparagraph (d) of this Section 13.02.

(c) The Lender may lease or sublease the Leased Property or any portion thereof or sell any interest the Lender has in the Leased Property.

(d) The Lender may recover from the City:

(i) the portion of Base Rentals and Additional Rentals which would otherwise have been payable hereunder, during any period in which the City continues to occupy, use or possess the Leased Property; and

(ii) Base Rentals and Additional Rentals which would otherwise have been payable by the City hereunder during the remainder, after the City vacates and surrenders possession of the Leased Property, of the Fiscal Year in which such Event of Default occurs.

(e) The Lender may take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this Lease.

**Section 13.03. Limitations on Remedies.** A judgment requiring a payment of money may be entered against the City by reason of an Event of Default only as to the City's liabilities described in paragraph (d) of Section 13.02 of this Lease. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent that the City fails to vacate and surrender possession of the Leased Property as required by Section 6.05 of this Lease, and only as to the liabilities described in paragraph (d)(i) of Section 13.02 of this Lease. The remedy described in paragraph (d)(ii) of Section 13.02 of this Lease is not available for an Event of Default consisting of failure by the City to vacate and surrender possession of the Leased Property within ten Business Days following notice of an Event of Nonappropriation.

**Section 13.04. No Remedy Exclusive.** Subject to Section 13.03 hereof, no remedy herein conferred upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved in this Article XIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIII.

**Section 13.05. Waivers.** The Lender may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. With respect to all of the remedies provided for in this Article XIII, the City hereby waives any damages occasioned by the Lender's repossession of the Leased Property upon the occurrence of an Event of Default.

**Section 13.06. Agreement to Pay Attorneys' Fees and Expenses.** To the extent permitted by law and subject to the provisions of Section 6.01 hereof, in the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Base Rentals and Additional Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall on demand therefor pay to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

## **ARTICLE XIV**

### **MISCELLANEOUS**

**Section 14.01. Sovereign Powers of City.** Nothing in this Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the City. Nothing in this Lease shall be construed to require the City to occupy and operate the Leased Property other than as lessee, or to require the City to exercise its right to purchase the Leased Property as provided in Article XI hereof.

**Section 14.02. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, addressed as follows:

if to the City:

City of Gunnison, Colorado  
201 W Virginia Ave  
Gunnison, Colorado 81230  
Attention: Finance Director;

and if to the Lender: [LENDER]  
[ADDRESS]  
[ADDRESS]  
Attention: [\_\_\_\_\_]

The City and the Lender may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 14.03. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Lender and the City and their respective successors and assigns, subject, however, to the limitations contained in Article XII of this Lease.

**Section 14.04. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified or altered without the written consent of the parties hereto.

**Section 14.05. Assignment and Transfer by Lender.** This Lease shall be assignable and transferrable by the Lender, without the City's consent, on prior written notice to the City not less than thirty (30) days prior to the assignment and transfer date, but only to: (i) an affiliate of the Lender; or (ii) a "Bank" as defined in Section 3(a)(2) of the Securities Act of 1933 as amended (the "Securities Act"). The City shall not be required to incur any expenses in connection with an assignment or transfer by the Lender.

**Section 14.06. Net Lease.** This Lease shall be deemed and construed to be a "triple net lease," and the City shall, subject to Section 6.01 hereof, pay absolutely net during the Lease Term, the Base Rentals, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this Lease).

**Section 14.07. No Rating, CUSIP Number or Securities Depository.** The Lease has not, is not expected to be, rated by a nationally recognized organization which regularly rates such obligations, assigned a CUSIP number or registered with or made eligible for registration with any securities depository, including but not limited to the Depository Trust Company, New York, New York.

**Section 14.08. Payments Due on Holidays.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

**Section 14.09. Severability.** In the event that any provision of this Lease, other than the requirement of the City to pay Base Rentals in accordance with Section 6.01 and the requirement of the Lender to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City under the conditions set forth in Article XI of this Lease, and the requirement that the obligation of the City to pay Base Rentals, Additional Rentals and other amounts under this Lease are subject to the limitations of Section 6.01 hereof, shall be held



invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 14.10. No Merger.** The Lender and the City intend that the legal doctrine of merger shall have no application to this Lease and that neither the execution and delivery of the Site Lease by the City and the Lender nor the exercise of any remedies under the Site Lease or this Lease shall operate to terminate or extinguish the Site Lease or this Lease, except as specifically provided therein and herein.

**Section 14.11. Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 14.12. Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 14.13. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 14.14. Reporting Requirements.** Throughout the duration of the Lease Term, the City shall annually provide the Lender its audited financial statements (audited by an independent certified accountant), to be prepared in accordance with the requirements of State law and delivered within 270 days after the conclusion of the City's Fiscal Year. Simultaneously with the delivery of the City's audited financial statements, the City shall deliver to the Lender an Annual Compliance Certificate signed by an Authorized Officer of the City in substantially the form attached hereto as Exhibit D: (i) stating that such officer has made a review of activities during the preceding period for the purpose of determining whether the City has complied with all of the terms, provisions and conditions of this Lease; and (ii) attesting that, to the best of his/her knowledge, the City has kept, observed, performed and fulfilled each and every such covenant, provision and condition on its part to be performed and no Event of Default has occurred, or if an Event of Default has occurred such certificate shall specify such event or condition, the nature and status thereof and any remedial steps taken or proposed to correct such event or condition.

**Section 14.15. Patriot Act Notice.** The Lender hereby notifies the City that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Lender to identify the City in accordance with the Patriot Act. The City hereby agrees that it shall promptly provide such information upon request by the Lender.

**Section 14.16. Representations Required by Title Insurer.** In connection with the City's procurement of title insurance, as required in Section 8.05 hereof, the City and the Lender both represent as follows:

- (a) There are no unrecorded amendments, modifications or transfers affecting the Site Lease which have not been disclosed to [INSURER] (the "Title Insurer");

(b) As of the date of this Lease, neither the City nor the Lender has breached of any covenants, conditions and provisions of the Site Lease; and

(c) Unless an Event of Nonappropriation or an Event of Default under this Lease shall have occurred and except as may otherwise be provided herein, the Lender may not assign its rights under the Site Lease or sublet the Leased Property without the written consent of the City. In the event that (a) this Lease is terminated for any reason and (b) the Site Lease is not terminated, the Lender may sublease the Leased Property or any portion thereof, or sell an assignment of its interest in the Site Lease.

[Signature Page to Lease Purchase Agreement follows]

WITNESS the due execution hereof as of the day and the year first mentioned above.

[LENDER], as Lessor

By: \_\_\_\_\_  
Authorized Officer

CITY OF GUNNISON, COLORADO, as  
Lessee

Attest:

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk

[Signature Page to Lease Purchase Agreement]

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

          This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as an authorized officer of [LENDER].

WITNESS my hand and official seal.

[SEAL]

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

My Commission Expires:

\_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF GUNNISON                )

      This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by  
Diego Plata, as Mayor, and Erica Boucher, as City Clerk of the City of Gunnison, Colorado.

      Witness my hand and official seal.

[SEAL]

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

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF LEASED PROPERTY**

***Address***

Parcel I - Police/Dispatch Building

910 W. Bidwell Avenue  
Gunnison, CO 81230

Parcel II – City Shop

1100 W. Virginia Avenue  
Gunnison, CO 81230

***Legal Description***

Parcel I - Police/Dispatch Building

LOTS 3-12 AND ADJACENT ALLEY, BLOCK 51, WEST GUNNISON

Parcel II – City Shop

BLOCKS 105, 106 & PART OF BLOCK 104 AND ADJACENT STREETS &  
ALLEYS, WEST GUNNISON

***Facilities***

Parcel I – The Police/Dispatch Building was constructed in 2014 with a total of 6,266 sf in size and houses the Police Department and Dispatch

Parcel II - The City Shop was constructed in 1992 and is 9,491 sf in size. The building houses Public Works, Electric and Water department offices, the fleet maintenance shop, parts warehouse and miscellaneous other spaces.

**EXHIBIT B**  
**BASE RENTALS SCHEDULE**

[See Attached]



## **EXHIBIT C**

### **PURCHASE OPTION PRICE**

The City may exercise its option to purchase the Leased Property in whole, on [\_\_\_\_\_, 20\_\_] or any date thereafter, with written notice to the Lender provided not less than thirty (30) days prior to the purchase option date, upon payment of the balance of the Base Rentals principal component which has not been paid, plus interest accruing on the outstanding principal balance as provided in Exhibit B hereto from the last date on which Base Rentals were paid to the date on which the option to purchase is exercised.

## EXHIBIT D

### FORM OF ANNUAL COMPLIANCE CERTIFICATE

For the Fiscal Year Ended December 31, 20\_\_

The undersigned, as an authorized officer of and on behalf of the City of Gunnison, Colorado (the “City”), a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado (the “State”) and the Charter of the City (the “Charter”) in connection with the Lease Purchase Agreement, \_\_\_\_\_, 2023 (the “Lease”), between the City, as lessee, and [LENDER], as lessor (the “Bank”), hereby attests as follows (capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Lease):

1. The undersigned is an Authorized Officer of the City.
2. The undersigned has made a review of activities during the preceding period for the purpose of determining whether the City has complied with all of the terms, provisions and conditions of the lease documents to which the City is a party, except as described below, if applicable.
3. To the best of his/her knowledge, the City has kept, observed, performed and fulfilled each and every such covenant, provision and condition on its part to be performed and no Event of Default or noncompliance has occurred.

*[or]*

An Event of Default or noncompliance under the Lease has occurred and is continuing. Such Event of Default or noncompliance and the actions the City is taking to remedy or terminate such Event of Default or noncompliance are described below:

---

*[description of Event of Default and remedial actions being taken]*

---

*[description of noncompliance, if any]*

**IN WITNESS WHEREOF**, I have hereunto subscribed my name as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF GUNNISON, COLORADO

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

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

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, Colorado 80202  
Attention: Thomas M. Peltz, Esq.

**SITE LEASE**

between

**CITY OF GUNNISON, COLORADO**  
as Lessor,

and

**[LENDER]**  
as Lessee

Dated as of \_\_\_\_\_, 2023

**THIS SITE LEASE**, dated as of \_\_\_\_\_, 2023 (this “Site Lease”), between the **CITY OF GUNNISON, COLORADO**, as lessor (the “City”), a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado (the “State”) and the Charter of the City (the “Charter”), and **[LENDER]**, as lessee (together with its successors and assigns, the “Lender”).

**W I T N E S S E T H:**

WHEREAS, the City is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City; and

WHEREAS, pursuant to Section 1.2 of the Charter, the City has the power to purchase, receive, hold and enjoy, or sell and dispose of real and personal property; and

WHEREAS, pursuant to Section 8.9 of the Charter, the City Council of the City (the “Council”) may, be ordinance, without the necessity of a vote of the registered electorate, enter into a rental or leasehold agreement that may provide for payment thereof by general appropriation levy the obligation to pay such rental or leasehold cost shall not be construed to be part of the Charter’s limitation on indebtedness; and

WHEREAS, the Council has determined it is in the best interests of the City and its inhabitants that the City finance certain utility cost savings measures and facility improvement measures, including but not limited to, new generators, installing a roof-mounted solar photovoltaic system, ballpark lighting replacement with LEDs, installing central building automated systems on HVAC, facility LED lighting upgrades and replacing the existing pool water treatment system (collectively, the “Project”); and

WHEREAS, in order to generate moneys to finance the Project, the Council has determined that the City shall convey a leasehold interest in the land and improvements (as such and as more particularly described in Exhibit A attached hereto, the “Leased Property”) for a lump-sum payment set forth in Section 3 hereof, and contemporaneously with the execution and delivery of this Site Lease, sublease the Leased Property back from the Lender pursuant to that certain Lease Purchase Agreement dated as of the date of this Site Lease (the “Lease Purchase Agreement”) between the Lender, as sublessor, and the City, as sublessee; and

WHEREAS, the Council has determined the completion of the Project, lease of the Leased Property to the Lender pursuant to this Site Lease and leaseback of the Leased Property from the Lender pursuant to the Lease Purchase Agreement is in the best interests of the City and its residents;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows;

**Section 1. Definitions.** Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease Purchase Agreement.

**Section 2. Site Lease and Terms.** The City hereby leases to the Lender and the Lender hereby leases from the City, on the terms and conditions hereinafter set forth, the Leased Property, which consists of the real property (including all improvements thereon, whether existing now or hereafter) described in Exhibit A attached hereto and made a part hereof, subject to permitted encumbrances as described in Exhibit B attached hereto, and such lease to the Lender is hereby deemed to be in the best interests of the City and its inhabitants.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 20[ ] (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If, prior to the Site Lease Termination Date, all legal interests of the Lender in the Leased Property have been conveyed to the City pursuant to the Lease Purchase Agreement as a result of the City's payment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 11.02 of the Lease Purchase Agreement, then the term of this Site Lease shall end immediately thereafter.

**Section 3. Rent and Payment.** The Lender has paid to the City and the City hereby acknowledges receipt from the Lender as and for rental hereunder, paid in advance, the sum of \$[ ] (the "Lender Payment Amount"), as and for all rent due hereunder, and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, to have and to hold for the term of this Site Lease as provided herein. The City hereby determines that such amount is reasonable consideration for the leasing of the Leased Property to the Lender for the term of this Site Lease. The Lender Payment Amount shall be deposited into an escrow account and shall be applied to the payment of Project costs as provided in the escrow agreement dated as of the date hereof by and among the City, the Lender and the escrow agent named therein.

**Section 4. Purpose.** The Lender shall use the Leased Property for the purpose of subletting the same to the City pursuant to the Lease Purchase Agreement; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Default under the Lease Purchase Agreement, the City shall vacate the Leased Property as provided in the Lease Purchase Agreement, the Lender may exercise the remedies provided in the Lease Purchase Agreement and the Lender may use or sublet the Leased Property for any lawful purposes for the remainder of the term of the Site Lease.

**Section 5. Owner in Fee.** The City covenants and represents that it is the owner in fee of the Leased Property, subject only to permitted encumbrances set forth in Exhibit B hereto, and the permitted encumbrances do not and shall not interfere in any material way with the Leased Property.

**Section 6. Assignments and Subleases.** Unless an Event of Nonappropriation or an Event of Default under the Lease Purchase Agreement shall have occurred and except as may otherwise be provided in the Lease Purchase Agreement, the Lender may not assign its rights under this Site Lease or sublet the Leased Property without the written consent of the City.

In the event that (a) the Lease Purchase Agreement is terminated for any reason and (b) this Site Lease is not terminated, the Lender may sublease the Leased Property or any portion thereof, or sell an assignment of its interest in this Site Lease. Except as provided in this Site

Lease or in the Lease Purchase Agreement, neither the City nor the Lender will sell, mortgage or encumber the Leased Property or any portion thereof during the term of this Site Lease.

**Section 7. Right of Entry.** The City reserves the right, so long as no Event of Nonappropriation or Event of Default shall have occurred under the Lease Purchase Agreement, for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

**Section 8. Termination.** The Lender agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property and any improvements and structures built on the Site to the City, and agrees that any fixtures, permanent improvements and structures existing upon the Leased Property, including any improvements and structures built on the Leased Property, at the time of the termination of this Site Lease shall remain thereon and all legal interests of the Lender thereto shall vest in the City. The Lender and any sublessee or assignee shall execute and deliver, upon request by the City, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such legal interests in the City.

**Section 9. Default.** In the event the Lender shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Lender, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Purchase Agreement shall be deemed to occur as a result thereof.

**Section 10. Quiet Enjoyment and Acknowledgment of Ownership.** The Lender at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Leased Property and any improvements and structures built on the Leased Property, subject to the provisions of the Lease Purchase Agreement, and the City hereby acknowledges that the Lender shall have a leasehold interest in the land comprising the Leased Property and in all fixtures, improvements and structures on the Leased Property, subject to the Lease Purchase Agreement.

**Section 11. Waiver of Personal Liability.** All liabilities under this Site Lease on the part of the Lender are solely liabilities of the Lender, and the City hereby releases each and every director, member, officer, employee and agent of the Lender of and from any personal or individual liability under this Site Lease. No employee or agent of the Lender shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Lender hereunder.

All liabilities under this Site Lease on the part of the City are solely liabilities of the City, and the Lender hereby releases each and every director, member, officer, employee and agent of the City of and from any personal or individual liability under this Site Lease. No employee or agent of the City shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the City hereunder.

**Section 12. Taxes; Maintenance; Insurance.** During the Lease Term of the Lease Purchase Agreement and in accordance with the provisions of the Lease Purchase Agreement, the City covenants and agrees to pay any and all assessments of any kind or character and all taxes,



including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon, and all maintenance costs and utility charges in connection with the Leased Property and any improvements thereon. In the event that the Lease Purchase Agreement is terminated for any reason and this Site Lease is not terminated, the City shall pay or cause to be paid when due all taxes and assessments imposed thereon and maintain the Leased Property in good condition. Any such payments that are to be made by the Lender are required to be made solely from the proceeds of any such subleasing or assignment of the Leased Property.

The provisions of the Lease Purchase Agreement shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease Purchase Agreement.

**Section 13. Damage, Destruction or Condemnation.** The provisions of the Lease Purchase Agreement shall govern with respect to any damage, destruction or condemnation of the Leased Property or any improvements and structures built on the Leased Property during the Lease Term of the Lease Purchase Agreement. In the event that (a) the Lease Purchase Agreement is terminated for any reason, (b) this Site Lease is not terminated and either (i) the Leased Property or any portion thereof are damaged or destroyed, in whole or in part, by fire or other casualty, or (ii) title to or use of the Leased Property or any part thereof shall be taken under the exercise of the power of eminent domain, the City and the Lender, or any sublessee, purchaser or assignee of the Leased Property from the Lender shall cause the Net Proceeds of any insurance claim or condemnation award to be applied in accordance with the provisions of Article IX of the Lease Purchase Agreement.

**Section 14. Hazardous Substances.** Except for customary materials necessary for construction, operation, cleaning and maintenance of the Leased Property, none of the City, the Lender or any sublessee or assignee of the Leased Property from the Lender shall cause or permit any Hazardous Substance (as defined in the Lease) to be brought upon, generated at, stored or kept or used in or about the Site without prior written notice to the City and the Lender and all Hazardous Substances, including, customary materials necessary for construction, operation, cleaning and maintenance of the Leased Property, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Site. If the presence of Hazardous Substance on the Leased Property caused or permitted by the City, the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, results in contamination of the Site, or if contamination of the Site by Hazardous Substance otherwise occurs for which the City, the Lender or any sublessee or assignee of the Leased Property, as the case may be, is legally liable for damage resulting therefrom, then the City, the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, shall reimburse the other party for its reasonable and necessary legal expenses to defend the parties hereto or assignees hereof that have not caused or permitted such contamination and are not so legally liable with respect to this Site Lease from claims for damages, penalties, fines, costs, liabilities or losses; provided that the cost of such defense, in the case of the City, shall be payable only if the cost of such defense has been annually appropriated by the City. This duty to reimburse legal expenses is not an indemnification. It is expressly understood that none of the City, the Lender or any sublessee or assignee is indemnifying any other person with respect to this Site Lease. Without limiting the foregoing, if the presence of any Hazardous Substance on the Site caused or permitted by

(a) the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, results in any contamination of the Leased Property, the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, shall provide prior written notice to the City and the Lender and promptly take all actions, solely at the expense of the Lender or any sublessee or assignee of the Leased Property, as the case may be, as are necessary to effect remediation of the contamination in accordance with legal requirements; or

(b) the City, results in any contamination of the Leased Property, the City shall provide prior written notice to the Lender and promptly take all actions, solely at the expense of the City, which expenses shall constitute Additional Rentals, as are necessary to effect remediation of the contamination in accordance with legal requirements.

**Section 15. Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 16. No Merger.** The City and the Lender intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of the Lease Purchase Agreement by the Lender and the City nor the exercise of any remedies under this Site Lease or the Lease Purchase Agreement shall operate to terminate or extinguish this Site Lease or the Lease Purchase Agreement, except as specifically provided herein and therein.

**Section 17. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed shall be made by United States registered mail, return receipt requested, postage prepaid, at the addresses indicated in the Lease Purchase Agreement, or to such other addresses as the respective parties may from time to time designate in writing.

**Section 18. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

**Section 19. Execution.** This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Site Lease.

**Section 20. Governing Law.** This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado.

**Section 21. Electronic Transactions.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed

documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the City and the Lender have caused this Site Lease to be executed by their respective officers thereunto duly authorized, and the City has affixed its official seal hereto all as of the day and year first above written.

[SEAL]

CITY OF GUNNISON, COLORADO, as Lessor

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk

[LENDER], as Lessee

By: \_\_\_\_\_  
Authorized Officer

[Signature Page to Site Lease]

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF GUNNISON                )

      This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by  
Diego Plata, as Mayor, and Erica Boucher, as City Clerk of the City of Gunnison, Colorado.

      WITNESS my hand and official seal.

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

[SEAL]

My Commission Expires:

\_\_\_\_\_

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

          This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as an authorized officer of [LENDER].

WITNESS my hand and official seal.

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

[SEAL]

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE LEASED PROPERTY**

***Address***

Parcel I - Police/Dispatch Building

910 W. Bidwell Avenue  
Gunnison, CO 81230

Parcel II – City Shop

1100 W. Virginia Avenue  
Gunnison, CO 81230

***Legal Description***

Parcel I - Police/Dispatch Building

LOTS 3-12 AND ADJACENT ALLEY, BLOCK 51, WEST GUNNISON

Parcel II – City Shop

BLOCKS 105, 106 & PART OF BLOCK 104 AND ADJACENT STREETS &  
ALLEYS, WEST GUNNISON

***Facilities***

Parcel I – The Police/Dispatch Building was constructed in 2014 with a total of 6,266 sf in size and houses the Police Department and Dispatch

Parcel II - The City Shop was constructed in 1992 and is 9,491 sf in size. The building houses Public Works, Electric and Water department offices, the fleet maintenance shop, parts warehouse and miscellaneous other spaces.



## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

Permitted Encumbrances means the following: (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pending contest pursuant to the provisions of Article VIII of the Lease; (b) this Site Lease and the Lease; (c) utility, access and other easements and rights of way, restrictions and exceptions which an Authorized Officer of the City certifies will not interfere with or impair the Leased Property, including rights or privileges in the nature of easements as provided in Section 8.06 of the Lease; (d) any financing statements filed to perfect security interests pursuant to this Site Lease or the Lease; (e) any encumbrance represented by financing statements in forms appropriate to perfect purchase money security interests given by the Lender in any of the Leased Property; (f) existing easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when a leasehold interest therein was conveyed to the Lender described in the title policy provided by the City, or approved in writing by the Lender pursuant to this Site Lease or otherwise, and which do not interfere in any material way with the Leased Property; and (g) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Leased Property and as do not render the title unmarketable.

## COLORADO ENERGY OFFICE – ENERGY PERFORMANCE CONTRACTING PROGRAM



**COLORADO**  
Energy Office

### ENERGY PERFORMANCE CONTRACTING

**FOR COLORADO POLITICAL SUBDIVISIONS** (municipality, county, special district, or school district (**§29-12.5-101 (5) C.R.S.**))

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POLITICAL SUBDIVISION:

City of Gunnison, Colorado

ENERGY SERVICE COMPANY  
(STATE REGISTERED NAME):

McKinstry Essention, LLC

PROJECT NAME:

City of Gunnison Energy Performance Contract

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## **PARTIES**

This Energy Performance Contract (hereinafter called "Contract" or "EPC") is entered into by and between Energy Service Company, (McKinstry Essention, LLC) (hereinafter called "Contractor"), and the (City of Gunnison) (hereinafter called the "Political Subdivision").

## **RECITALS**

**WHEREAS**, authority for the Political Subdivision to enter into this Contract exists in the law, including **§29-12.5-101, C.R.S.** and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision; and

**WHEREAS**, required approvals, clearance and coordination have been accomplished by Political Subdivision, to enter into a contract for the design and implementation of energy analysis and recommendations pertaining to measures that would significantly increase Utility Cost Savings, Operations and Maintenance Cost Savings, and Vehicle Fleet Operational and Fuel Cost Savings, pursuant to **§29-12.5-101, C.R.S.**; and

**WHEREAS**, the Contractor or other entity and the Political Subdivision entered into a certain Investment Grade Audit (IGA) Contract pursuant to **§29-12.5-102, C.R.S.**, whereby the Contractor or other entity provided an analysis and recommendations in the form of an IGA Report and an Energy Performance Contracting (EPC) Project Proposal. Such report and project proposal provided: estimates of (i) the amounts by which Utility Cost Savings and Operation and Maintenance Cost Savings would increase and (ii) all costs of such Utility Cost-Savings Measures or Facility Improvement Measures (FIMs), including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service or estimates of (i) the amounts by which Vehicle Fleet Operational and Fuel Cost Savings would increase and (ii) all costs of such Vehicle Fleet Operational and Fuel Cost-Savings Measures, set forth in **§29-12.5-102(2), C.R.S.**; and

**WHEREAS**, the Contractor or other entity was selected by the Political Subdivision as the entity to analyze and recommend measures to significantly increase utility cost, operation and maintenance cost, and vehicle fleet operational and fuel cost savings, through an IGA, pursuant to competitive negotiations; and

**WHEREAS**, the Political Subdivision has approved Contractor's or other entity's analyses and recommendations in the IGA set forth in **§29-12.5-102, C.R.S.**; and

**WHEREAS**, the analysis and recommendations provided by the Contractor or other entity pursuant to the IGA indicate that the expected annual payments by the Political Subdivision required under this Contract, or as required in a contract with the Political Subdivision and any Third-Party Lessor, which payments shall include any annual maintenance costs and annual fees for measurement and verification per statute, for the implementation of one or more Utility Cost-Savings Measures or FIMs is required to be equal to or less than the sum of the Utility Cost Savings and Operation and Maintenance Cost Savings achieved by the implementation of such Utility Cost-Savings Measures and FIMs on an annual basis; and

**WHEREAS**, the Contractor or other entity and the Governing Body of the Political Subdivision have reviewed the Energy Performance Contract Project Proposal, which was derived from the IGA Report, in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the Colorado Energy Office (CEO), and created a finalized EPC Description of Work (**Schedule B**), and that all the necessary information has been incorporated into the appropriate EPC schedules to complete the Work; and

**WHEREAS**, the Contractor is either (i) the same entity that performed the IGA and is therefore exempt from any additional competitive bidding or procurement provisions, pursuant to **§29-12.5-103(1)(a), C.R.S.**, or (ii) not the same entity that performed the IGA and was selected for performance of this Contract pursuant to negotiation requirements, and applicable competitive bidding or procurement provisions; and

**NOW, THEREFORE**: in consideration of the premises and mutual agreements and covenants hereinafter set forth,

and intending to be legally bound, the Political Subdivision and the Contractor hereby agree to the terms and conditions in this Contract.

#### **EFFECTIVE DATE AND NOTICE OF NON-LIABILITY**

This Contract shall not be effective or enforceable until it is authorized and approved by the Governing Body (defined below in Article 1) of the Political Subdivision, by applicable resolution, ordinance or other authorizing action of the Governing Body, and executed by a duly authorized representative of the Political Subdivision, as set forth in such resolution, ordinance or other authorizing action (defined below as the "Principal Representative"), on the date set forth in Section 28 hereof in the signature block of the Political Subdivision (the "Effective Date"). The Political Subdivision shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay or reimburse the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract, except that the Principle Representative may make any payments for work that was completed under a properly executed contract for an investment grade audit that are to be paid under this contract in accordance with the terms of the investment grade audit contract.

All references in this Contract to "Article," "Section," "Subsections," "Exhibits" or other "attachments," whether spelled out or using the § symbol, are references to Articles, Sections, Subsections, Exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

#### **1. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

- A. Adjusted-Baseline Energy**  
"Adjusted-Baseline Energy" means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**  
"American Society of Heating, Refrigeration, and Air Conditioning Engineers" or "ASHRAE" means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work and the IGA Project Proposal Report.
- C. Baseline Energy**  
"Baseline Energy" means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**  
"Baseline Period" means the period of time chosen to represent operation of the facility or system before implementation of a Utility Cost-Savings Measure or any applicable FIM, as defined herein. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.
- E. Baseline**  
"Baseline" means and pertains to the baseline period.
- F. Business Day**  
"Business Day" means any day in which the Political Subdivision is open and conducting business, but shall not include Saturday, Sunday or any holidays observed by the Political Subdivision.
- G. Colorado Open Records Act (CORA)**  
"CORA" means the Colorado Open Records Act, **§§24-72-200.1 et seq., C.R.S.**
- H. Commissioning**  
"Commissioning" means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Political Subdivision's functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.
- I. Compensation**  
"Compensation" means the funds payable to the Contractor by the Political Subdivision for the performance of the Contractor's obligations hereunder, including, but not limited to, the Project and the

M&V Services.

**J. Contingency Funds**

"Contingency Funds," if applicable, means the moneys of the Political Subdivision not included in the Fixed Limit of Construction Cost and budgeted, appropriated and encumbered for Project contingency purposes in order that the Political Subdivision may use such moneys to pay to the Contractor, any other contractor through a Separate Contract constituting a portion of the Project Work as determined and authorized by the Governing Body, or any Third-Party Lessor. Contingency Funds could be used in the event of construction cost budget overage, if the Principal Representative, upon the authorization of the Governing Body, determines to add to or change the Contractor's Scope of Work, hire a contractor for special services (example-environmental remediation) or reduce the Political Subdivision's obligation to any Third-Party Lessor, all pursuant to **Article 6(C)** and **Article 6(J)**. All contingency item requests that are under \$10,000 will be Contractor controlled and will not require approval from the Political Subdivision. All contingency item requests above \$10,000 will be Political Subdivision-approved and controlled up to the total contingency amount defined in the contract.

**K. Construction Commencement Date**

"Construction Commencement Date" means the date the Principal Representative issues a written Notice to Proceed to Commence Construction Phase form.

**L. Construction Documents**

"Construction Documents" means the documents set forth in **Article 6(A)**.

**M. Construction Term**

"Construction Term" means the period of time in which Contractor shall complete the Project, pursuant to **Article 6(F)**.

**N. Contract Documents**

"Contract Documents" means this Contract; the Exhibits; the Schedules; and the Construction Documents. **Article 25** and **Article 26**, respectively, list the Exhibits and Schedules attached hereto and incorporated by reference herein.

**O. Contractor's Intellectual Property**

"Contractor's Intellectual Property" means any formulas, patterns, devices, secret inventions or processes, copyrights, patents, or other intellectual property purchased, licensed or developed by Contractor prior to or outside of this Contract or purchased, licensed or developed by Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

**P. Contract Term**

"Contract Term" means the definition set forth in **Article 2(B)**.

**Q. Cost-Weighted Average Service Life**

"Cost-Weighted Average Service Life" means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each Utility Cost-Savings Measure or FIM (excluding the audit cost and Political Subdivision's contingency), and the total cost of all the measures. The formula is the sum of each measure cost divided by the total cost multiplied by its service life.  $\text{Cost-Weighted Average Service Life} = \sum \text{each measure} \div \text{total cost} \times \text{service life}$ .

**R. C.R.S.**

"C.R.S." means the Colorado Revised Statutes, as amended.

**S. Deliverable**

"Deliverable" means any document, material, data, information, specification or other deliverable that results from or is provided through the Services or that Contractor is required to deliver to the Principal Representative under this Contract, the Exhibits, Schedules or other document or report which is required to be delivered by Contractor to the Principal Representative pursuant to this Contract and is created after the Effective Date.

**T. Design Documents**

"Design Documents" or "DDs" means documents supplied by Contractor consisting of drawings, specifications, and other documents that fix and describe the size and character of the entire Project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate, and include design plans and documentation for each Utility Cost-Savings Measure or FIM that may become part of the Project, and as further described in **Article 5(C)**.

**U. Energy**

"Energy" means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility charged service.

**V. Energy Conservation Measure**

"Energy Conservation Measure" or "ECM" means an Energy Saving Measure or Utility Cost-Savings Measure as defined in **§29-12.5-101(4)** and **§29-12.5-101(9)**, C.R.S., respectively. An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utilities) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**W. Energy Cost-Savings Contract**

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract as defined in C.R.S. **29-12.5-101 (2.5)**.

**X. Energy Cost-Savings Measure**

"Energy Cost-Savings Measure" means a Utility Cost-Savings Measure or a Vehicle Fleet Operational and Fuel Cost-Savings Measure. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost-savings measures.

**Y. Energy Performance Contract**

"Energy Performance Contract" ("EPC") as defined in **§29-12.5-101(3)**, C.R.S., is a contract for evaluations, recommendations or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost-Savings, which:

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the Political Subdivision contracting for the Energy Cost-Savings Measures;
- iii. Requires the party entering into the Energy Performance Contract with the Political Subdivision to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year;
- iv. Requires a minimum of one-tenth of payments by the Political Subdivision to be made within the first two years. Requires remaining payments by the Political Subdivision to be made within 12 years after the date of the execution of the contract, except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the contract is made, not to exceed 25 years.

**Z. Energy Service Company**

"Energy Service Company" or "ESCO" means the energy service company entity entering into a contract to design and construct the Project with the Political Subdivision. The Energy Service Company may also be referred to as "Contractor" in this Contract or in related schedules, exhibits, attachments, contract modification or procedural documents. The ESCO may be the architect/engineer for the Utility Cost-Savings Measures or may contract out these professional services with approval of the Governing Body.

**AA. Equipment**

"Equipment" means the equipment, systems and associated services set forth on **Schedule B**, together and with any and all includes all replacements, repairs, restorations, Modifications and improvements of or to such Equipment.

**BB. Escrow Agreement**



"Escrow Agreement" means the escrow agreement, if applicable, executed by the Political Subdivision, the Lessor, if any, and the Escrow Fund Custodian, pursuant to which the Escrow Fund is established and administered.

**CC. Escrow Fund**

"Escrow Fund" means the fund, if applicable, established under the Escrow Agreement

**DD. Escrow Fund Custodian**

"Escrow Fund Custodian" is indicated in **Article 3D**.

**EE. Evaluation**

"Evaluation" means the process of examining the Contractor's Work and rating such Contractor's Work based on criteria established in this Contract.

**FF. Excluded Materials and Activities**

"Excluded Materials and Activities" means asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, pollutants, hazardous wastes, hazardous materials, or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof.

**GG. Facility**

"Facility " or "Facilities" means any building or utility owned or operated by the Political Subdivision.

**HH. Facility Improvement Measure**

"Facility Improvement Measure" or "FIMS" is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an EPC. A FIM may be an activity requested by the Political Subdivision, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an EPC. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**II. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines**

"Federal Energy Management Program ("FEMP") Measurement and Verification (M&V) Guidelines" means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP (definition below). The FEMP M&V Guidelines represents a specific application of the IPMVP to EPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

**JJ. Finance Agreement Term**

"Finance Agreement Term" means the original term and all renewal terms of any Lease-Purchase Agreement or any other financing or funding agreement of the Political Subdivision for the costs of this Contract.

**KK. Fiscal Year**

"Fiscal Year" means a 12-month period beginning on [January 1] of each calendar year and ending on [December 31].

**LL. Fixed Limit of Construction Cost**

"Fixed Limit of Construction Cost" or "FLCC" means the total amount to be paid by the Political Subdivision or any Third-Party Lessor to Contractor for Contractor's satisfactory performance, construction, and installation of all elements of the Work, which shall include, but not be limited to, costs and expenses, permits, performance bonds, materials, labor, auditing, IGA, design, engineering, project construction management costs, commissioning, training, profit, travel expenses, communications, code work, including review, inspection, and compliance unless otherwise noted, acquisition and installation of Equipment. The Fixed Limit of Construction Cost is included as a part of the MCP and all costs comprising the Fixed Limit of Construction Cost shall be identified in **Schedule F**, which shall be executed after this Contract is effective. The Fixed Limit of Construction Cost does not include any Contingency Funds or the M&V Fee.

**MM. Governing Body**

“Governing Body” means the governing body of the Political Subdivision, a governing body (city or town council, board of trustees, etc.) of any municipality or home rule county, a board of county commissioners of any county, a board of directors of any special district, or a board of education of any school district as defined in **§29-12.5-101(1), C.R.S.**

**NN. Guarantee**

“Guarantee” means the warranty and guarantee made by the Contractor in **Article 14** hereof that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C** which shall be equal to or greater than the Political Subdivision’s annual payments used to repay the project funding, as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in Contractor directly remunerating the Political Subdivision the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the Governing Body’s consent, which shall not be unreasonably withheld, Contractor may implement additional Utility Cost-Savings Measures or FIMs, at no cost to the Political Subdivision, which may generate additional annual cost savings in future years of the Performance Period to offset future Guaranteed Annual Cost Savings shortfall.

**OO. Guarantee Period**

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the Contractor set forth in **EPC Schedule D**.

**PP. Guaranteed Annual Cost Savings**

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings, Guaranteed Annual Operations and Maintenance Cost Savings, and Annual Vehicle Fleet Operational and Fuel Cost Savings guaranteed by Contractor resulting from the Project that shall occur for each year of the Guarantee Period pursuant to **Schedule C**. Guaranteed Annual Utility Cost Savings shall be determined by Contractor’s Measurement and Verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in **Schedule C**.

**QQ. Guaranteed Annual Operations and Maintenance Cost Savings**

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the Political Subdivision’s operation and maintenance budget.

**RR. Guaranteed Annual Utility Cost Savings**

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in **Schedule C**.

**SS. Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings**

“Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings” means measurable and verifiable annual cost savings resulting from the reduction of vehicle operations, fuel and maintenance costs.

**TT. International Performance Measurement and Verification Protocol**

“International Performance Measurement and Verification Protocol” or “IPMVP” means the current document prepared by the Efficiency Valuation Organization on the Effective Date of the IGA contract. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the Investment Grade Audit Report and Energy Performance Contract Project Proposal (**reference §7**).

**UU. Investment Grade Audit**

“Investment Grade Audit” or “IGA” means a detailed audit of certain Facilities of the Political Subdivision, including the Premises, conducted by the Contractor or another party pursuant to the IGA Contract, as provided in **§29-12.5-102, C.R.S.** and in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the CEO, which serves as the basis for this Energy Performance Contract.

**VV. Investment Grade Audit Contract**

“Investment Grade Audit Contract” (IGA) means that certain contract between the Contractor and the

Political Subdivision and entered into pursuant to **§29-12.5-102, C.R.S.**, and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Performance Contract to provide for the implementation of Utility Cost Savings Measures, Facility Improvement Measures, and Operation and Maintenance Cost Savings Measures in Facilities owned or leased by the Political Subdivision and vehicle fleet operational and fuel cost saving measures at the Premises of the Political Subdivision.

**WW. kW**

"kW" means "Kilowatt" (abbreviation)

**XX. kWh**

"kWh" means "Kilowatt-hour" (abbreviation)

**YY. Lease Purchase Agreement**

"Lease Purchase Agreement" means any annually renewable lease purchase financing agreement entered into by the Political Subdivision, as lessee of the Equipment, and a Third-Party Lessor, as lessor of the Equipment and Services, for the financing of the Utility Cost-Savings Measures and FIMs as a result of Contractor's work pursuant to this Contract (constituting the capital project so financed), as authorized pursuant to **§29-12.5-103, C.R.S.**

**ZZ. Material Change**

"Material Change" means any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature as determined by the Governing Body or the Principal Representative, if authorized to do so by the Governing Body, and the Contractor, to increase or decrease Guaranteed Annual Cost Savings, as defined in **PP** above, in accordance with the provisions and procedures set forth in **Schedule B** and is correlated with such change in energy or water usage, and as described in **Article 17**.

**AAA. Maximum Contract Price**

"Maximum Contract Price" or "MCP" means the maximum amount of total allowable costs under this Contract, as set forth in **Article 4(A)**, which shall be the total amount paid by the Political Subdivision, or Third-Party Lessor on behalf of the Political Subdivision, to Contractor, and which shall include, but not be limited to, the Fixed Limit of Construction Cost, the Measurement and Verification Fee, and any Contingency Funds. It is the maximum amount payable to the Contractor pursuant to this Contract.

**BBB. Measurement and Verification**

"Measurement and Verification" or "M&V" means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy use. Instead, savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current International Performance Measurement and Verification Protocol ("IPMVP"), as may be amended by the Efficiency Valuation Organization on the Effective Date of this contract. The CEO Measurement and Verification Policy may allow alternative verification standards as appropriate for select Utility Cost-Savings Measures or FIMs.

**CCC. M&V Commencement Date**

"M&V Commencement Date" means the first day of the month following the completion by Contractor and the Principal Representative's submittal of Notice of Final Acceptance.

**DDD. M&V Fee**

"M&V Fee" means an annual fee paid to Contractor by the Political Subdivision for Contractor's satisfactory performance of the M&V Services, as set forth in **Article 13**. The M&V Fee is included as a part of the EPC Maximum Contract Price.

**EEE. M&V Plan**

"M&V Plan" defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in **EPC Contract Schedule D**.

**FFF. M&V Services**

"M&V Services" means Services or activities relating to the measurement and verification by Contractor of the efficiency and effectiveness of the Project, pursuant to this Contract and the CEO Measurement and Verification Policy as applied.

**GGG. M&V Term**

"M&V Term" has the meaning as described to it in **EPC Contract §13**.

**HHH. MMBtu**

"MMBtu" means 1 Million British thermal unit (abbreviation).

**III. Modification (of Equipment)**

"Modification of Equipment" means a field installable upgrade, feature, addition, accessory or modification to Equipment, which is made by or for the original manufacturer of such Equipment.

**JJJ. Modification (to the contract)**

"Modification to the Contract" means a written (i) amendment to this Contract signed by both parties or (ii) Change Order executed in accordance with **Schedule A**.

**KKK. Open Book Pricing**

"Open Book Pricing" means "Open Book Pricing" as set forth in **Article 6(H)**.

**LLL. Operation and Maintenance Cost Savings**

"Operation and Maintenance Cost Savings" as defined in **§29-12.5-101 (4.5), C.R.S.**, means the measurable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

**MMM. Personally Identifiable Information (PII)**

"PII" means personally identifiable information including, without limitation, any information maintained by the Political Subdivision about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in **§24-72-501, C.R.S.**

**NNN. Political Subdivision Confidential Information**

"Political Subdivision Confidential Information" means any and all Records of the Political Subdivision not subject to disclosure under CORA. Confidential Information of the Political Subdivision shall include, but is not limited to PII, Tax Information, and Political Subdivision personnel records not subject to disclosure under CORA.

**OOO. Premises**

"Premises" is as set forth in **Article 5(A)**.

**PPP. Project**

"Project" means Contractor's design, acquisition, construction, and installation of the Utility Cost-Savings Measures and FIMs, and all Equipment and Services related thereto, as set forth in **Schedule B** and the Contract Documents but does not include M&V Services.

**QQQ. Rebate**

"Rebate" means moneys used for Contractor's compensation that are not the moneys of the Political Subdivision or moneys from a Third-Party Lessor, including solar REC's and utility rebates, all as described in **Schedule B** and on **Schedule G**.

**RRR. Review**

"Review" means the examination by the Principal Representative of the Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with this Contract.

**SSS. Schedule A**

"Schedule A" means **Schedule A** to this Contract, attached hereto as General Conditions of the Energy Performance Contract.

**TTT. Schedule B**

"Schedule B" means **Schedule B** to this Contract, attached hereto as EPC Description of Work. **Schedule B** is developed from information in the EPC Project Proposal. **Schedule B** includes but is not limited to: the final list of facilities that define the Premise, final list of improvements, installed equipment and upgrades, training, start-up, commissioning, and design/construction schedule. **Schedule B** details the cost for the Work from initial design to the start of the Guarantee Period. **Schedule B** includes the financial performance including any rebates, grants, Political Subdivision provided funds, and the potential third-party financial amount that totals up to the Maximum Contract Price.

**UUU. Services**

“Services” means all services performed by Contractor hereunder, including, but not limited to, engineering, design, project management, construction management, design, training, and M&V Services, and tangible material produced either separately or in conjunction with the Work performed.

**VVV. Simple Payback**

“Simple Payback” means the length of time, typically presented in years, required to recover the cost of a measure or project.

**WWW. Tax Information**

“Tax Information” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

**XXX. Third-Party Lessor**

“Third-Party Lessor” means a third-party entity entering into a Lease Purchase Agreement, as lessor, with the Political Subdivision, as lessee, for the lease purchase financing of the Equipment and the Services pursuant to this Contract.

**YYY. Utility or Utilities**

“Utility” or “Utilities” means the water, sewer services, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Governing Body of the Political Subdivision.

**ZZZ. Utility Cost Savings**

“Utility Cost Savings” means the definition set forth in **§29-12.5-101(7), C.R.S.**, is the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Utility Cost-Savings Measures or FIMs when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

**AAAA. Utility Cost-Savings Contract**

“Utility Cost-Savings Contract” means an Energy Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment set forth in **§29-12.5-101(8), C.R.S.**

**BBBB. Utility Cost-Savings Measure**

“Utility Cost-Savings Measure” means the definition set forth in **§29-12.5-101(9), C.R.S.**, is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems
- ii. Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption
- iii. Automatic energy control systems
- iv. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants
- v. Caulking or weather stripping
- vi. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system
- vii. Energy recovery systems
- viii. Renewable energy and alternate energy systems
- ix. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings
- x. Devices that reduce water consumption or sewer charges
- xi. Changes in operation and maintenance practices
- xii. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel

sources, and water

- xiii. Indoor air quality improvements that conform to applicable building code requirements
- xiv. Daylighting systems
- xv. Building operation programs that reduce utility and operating costs including computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities
- xvi. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules
- xvii. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes
- xviii. Vehicle fleet operational and fuel cost savings
- xix. When an energy saving measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy, as set forth in **§29-12.5-103(3), C.R.S.**

Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**CCCC. Vehicle Fleet Operational and Fuel Cost Savings**

“Vehicle Fleet Operational and Fuel Cost Savings” means the definition set forth in **CRS§29-12.5-101(10)**, which is a measurable decrease in the operation and maintenance costs of Political Subdivision vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

**DDDD. Vehicle Fleet Operational and Fuel Cost-Savings Contract**

“Vehicle Fleet Operational and Fuel Cost-Savings Contract” in the definition set forth in **§29-12.5-101(11), C.R.S.**, means an Energy Performance Contract or any other agreement in which Vehicle Fleet Operational and Fuel Cost Savings are used to pay for the cost of the vehicle or associated capital investments.

**EEEE. Vehicle Fleet Operational and Fuel Cost-Savings Measure**

“Vehicle Fleet Operational and Fuel Cost-Savings Measure” is defined in **§29-12.5-101(12), C.R.S.**, means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

- i. Vehicle purchase or lease costs either in full or in part;
- ii. Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy performance contract.

**FFFF. Work**

“Work” means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

**GGGG. Work Product**

“Work Product” means the tangible or intangible results of the Contractor’s Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the Contractor’s Intellectual Property.

Any other term used in this Contract that is defined in a Schedule shall be construed and interpreted as defined in that Schedule.

## **2. ORGANIZATION AND TERM**

### **A. Contract Phases**

This Contract shall be performed in accordance with its provisions and contains the following phases:

- i. Funding (**Articles 3 and 4**)
- ii. Pre-Construction (**Article 5**)
- iii. Construction (**Article 6, 7, and 9**)
- iv. Start-up, Commissioning, and Acceptance (**Article 8**)

- v. Training (**Article 10**)
- vi. Measurement and Verification (**Article 13**)

**B. Contract Term**

Contractor shall complete the Work and its other obligations as described herein on or before

May 31, 2024

The Political Subdivision shall not be liable to compensate the Contractor for any Work performed prior to the Effective Date or after the termination of this Contract. The term of this Contract ("Contract Term") shall be divided into three (3) separate components:

- i. The "Planning Term," shall commence on the Effective Date and upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Design Phase under **Article 4(H)** and terminate upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase for the last improvement per the Construction and Installation **Article 6(B)**
- ii. The "Construction Term," shall commence upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase under **Article 6(E)**, and terminate no more than

365 days (excludes measurement & verification period) after the Construction Commencement Date, unless sooner terminated as provided in this Contract

- iii. The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute (**§29-12.5-101(3)(c), C.R.S.**) and no greater than the Finance Agreement Term. The M&V Term shall terminate pursuant to **Schedule D** unless sooner terminated as provided in this Contract.

**3. FUNDING**

**A. Source of Funds**

The Political Subdivision intends to obtain

\$4,019,177

in funds for the MCP required under this Contract through a loan, grants and capital or in such other manner as the Governing Body of the Political Subdivision, in its sole discretion, shall deem authorized by resolution or ordinance pursuant to and within the limitations of applicable constitutional, statutory (which may include **§29-12.5- 101(3)(b), C.R.S.**) and code provisions pertaining to the Political Subdivision. The total amount of funds that the Governing Body of the Political Subdivision will seek to acquire from outside sources will be:

\$3,105,002.

If Political Subdivision is unable to obtain funds in any manner for the entire amount of the MCP, the Governing Body of the Political Subdivision and the Contractor may negotiate a reasonable reduction in the Project scope, price, and Guarantee in a manner consistent with any available funds or the Governing Body of the Political Subdivision may unilaterally terminate this Contract, in the sole discretion of the Governing Body of the Political Subdivision. If the Political Subdivision is unable to obtain financing for the entire amount of the MCP and the Parties are unable to revise the Project scope to obtain available funds within sixty (60) days of the Effective Date, either Party may terminate this Contract upon 10 days written notice to the other Party and such termination shall not be a default under this Contract. Upon termination, neither Party shall have any obligation to the other Party under this Contract, except for those provisions which by their terms survive any such termination, as provided herein.

**B. Political Subdivision Funds**

The Political Subdivision will provide all or a portion of the moneys for the MCP required under this Contract in the amount of

\$914,175

from existing and future appropriations specifically budgeted, appropriated and encumbered for this purpose as full or partial compensation for the cost of the Project as described in



**Schedule B** and indicated on **Schedule G** to be paid to Contractor as reimbursement pursuant to **Schedule A**.

**C. Escrow Account**

Any funds obtained by the Political Subdivision from a Third-Party Lessor shall be deposited into an escrow account established on the Political Subdivision's behalf. The Principal Representative shall be authorized by the Governing Body of the Political Subdivision to direct the Escrow Fund Custodian, as described in **Article 3(D)**, to compensate Contractor for the Work performed by Contractor and accepted in writing by the Principal Representative in accordance with **Article 4** and **Schedule A**, and the Escrow Fund Custodian will make payment from the escrow account in accordance with procedures set forth in the Lease Purchase Agreement, this Contract, and any escrow agreement. Final payment shall be made to Contractor upon the Principal Representative's submittal of the Notice of Final Acceptance of the Project. Any proceeds from the escrow account shall accrue to the Political Subdivision.

**D. Escrow Fund Custodian**

The Escrow Fund Custodian is hereby identified as:

INSERT NAME
INSERT TITLE
INSERT ADDRESS
INSERT PHONE NUMBER
INSERT EMAIL

Escrow Fund Custodian is subject to change at any time, without notice, and at the Principal Representative's discretion. The Principal Representative shall notify Contractor and the Third-Party Lessor within 15 days of any change in the Escrow Fund Custodian.

**E. Energy Policy Act**

The Political Subdivision agrees that, for the Work to be performed herein, Contractor may in consultation with the Principal Representative, determine which, if any, entity shall be the "designer(s)" as that term is identified in the Energy Policy Act of 2005, and which entity(s) shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under Section 179(d) of the Energy Policy Act of 2005, any tax benefit associated with the Work. Upon Notice of Final Acceptance, the Governing Body of the Political Subdivision, at its sole discretion, may authorize the Principal Representative to execute a Written Allocation including a Declaration related to Section 179D of the Internal Revenue Code. The Contractor may prepare the Declaration and all accompanying documentation.

**4. COMPENSATION**

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative will, or will direct any Escrow Fund Custodian to, in accordance with the provisions of this **Article 4**, pay Contractor in the amounts and using the methods set forth below:

**A. Maximum Contract Price**

The MCP from <b>Schedule G</b> is:	\$4,019,177
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The MCP reflects the maximum amount of compensation payable to Contractor pursuant to this Contract. The MCP may include, without limitation,

The cost of the IGA in the amount of:	\$41,314
The Fixed Limit of Construction Cost of:	\$3,830,736
The M&V Fees in an amount not to exceed:	\$21,757
And all Contingency Funds in the amount of:	\$125,370

If any Political Subdivision funds are used pursuant to **Article 3(B)** of this Contract, the maximum amount of the MCP available for payment by the Political Subdivision during any Fiscal Year of the Contract term shall be as follows:

*(Match this schedule with **Schedule G** and **Schedule B**, but do not use if amount in Political Subdivision provided capital contribution is zero)*

\$914,175 in fiscal year 2023 ending December 31 <sup>st</sup> , 2023
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**B. Changes to MCP**

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative may decrease the amount available for the MCP with the mutual consent of the Contractor and assuring that the decrease in the MCP does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. The decrease in MCP may be based on the actual costs of labor and materials to Contractor. The MCP shall not be increased without an amendment to this Contract, in accordance with Political Subdivision Fiscal Rules.

**C. Invoicing**

Contractor shall invoice the Political Subdivision in the format and manner required by the Principal Representative. The contractor shall use the categories in **Schedule F** to demonstrate all cost categories, shall demonstrate all subcontractor costs, and shall allow the Principal Representative to review any records relating to the Project. The contractor shall provide measure-specific information and Project-level information in **Schedule F**. For each Utility Cost-Savings Measure and FIM and for the Project the profit shall be clearly explained and referenced in each invoice. The M&V Services shall be invoiced separately in a format and manner as required by the Principal Representative.

**D. Payments and Retainage**

The Principal Representative will, or will direct any Escrow Fund Custodian to, compensate Contractor for Work done by Contractor pursuant to **Schedule A**. The Principal Representative shall withhold, and release retainage amounts pursuant to **Schedule A** and as allowed by applicable law.

**E. Availability of Political Subdivision Funds**

The Political Subdivision cannot make commitments in this EPC that extend beyond the term of the current Fiscal Year. Therefore, Contractor's compensation beyond the current Fiscal Year is contingent upon the specific budgeting, appropriations and encumbrances by the Governing Body of the Political Subdivision, in its sole discretion, for the purpose of providing for the commitments in this EPC in subsequent Fiscal Years. If other funds are used to fund this Contract, in whole or in part, the Political Subdivision's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds specifically budgeted, appropriated and encumbered for this Contract and the Political Subdivision's liability for such payments shall be limited to the amount remaining of such encumbered funds. If Political Subdivision or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Governing Body of the Political Subdivision may terminate this Contract, in whole or in part, without further liability in accordance with the provisions hereof.

**F. Erroneous Payments and Excess Funds**

Payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and Contractor or by other appropriate methods and

collected as a debt due to the Political Subdivision. Such funds shall not be paid to any party other than the Political Subdivision.

**G. Notice to Proceed to Commence Design Phase**

If the Political Subdivision obtains funding from any and all sources in the amount of the MCP for the purposes set forth herein, upon terms and conditions satisfactory to the Governing Body of the Political Subdivision, in its sole discretion, or obtains funds sufficient for a revised Project scope, price, and Guarantee, if authorized by the Governing Body of the Political Subdivision, the Principal Representative shall deliver to Contractor a Notice to Proceed to Commence Design Phase instructing Contractor to commence with the Pre-Construction Services, as described in **Article 5**.

**5. PRE-CONSTRUCTION SERVICES**

**A. Premises**

The Premises are the Facilities owned or controlled by the Political Subdivision, as initially detailed on the IGA Contract Exhibit C and finalized in EPC **Schedule B**.

**B. Professional Design Services**

**i. Qualifications**

Design services shall be performed by properly licensed and qualified architects, engineers and other professionals selected and paid by the Contractor, subject to review by the Principal Representative. The professional obligations of such persons shall be undertaken and performed on behalf of the Contractor. Nothing contained herein shall create any contractual relationship with the Political Subdivision between Subcontractors, architects, engineers or suppliers. Prior to designating a professional to perform any of these services, Contractor shall submit the name, together with a resume of training and experience in the work of like character and magnitude to the Project being contemplated to the Political Subdivision. All Drawings, Specifications, calculations, certifications and Submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Political Subdivision shall be entitled to rely upon the adequacy, accuracy and completeness of such design services.

**ii. Designation of Professionals**

All Work performed by Contractor that constitutes the practice of architecture/engineering shall be performed by properly qualified and licensed professionals employed by Contractor and shall be performed in accordance with applicable Colorado law.

**iii. Conflict of Interest**

Consultant or subcontractor, not already approved by the Governing Body of the Political Subdivision, shall not be engaged to perform Work wherein a conflict of interest exists, as described in **Article 27(N)**, provided, however, that with full disclosure to the Governing Body of the Political Subdivision of such interest, the Governing Body of the Political Subdivision may provide a waiver, in writing, in respect to the particular consultant or subcontractor.

**iv. Pre-construction Meeting**

The contractor and its architect and/or engineer may attend pre-construction meetings, as deemed necessary by the Contractor and the Principal Representative and such additional meetings as the Principal Representative may request. All pre-construction meetings shall be scheduled by the Contractor with the approval of the Principal Representative.

**v. Minutes**

The contractor shall record the minutes of all meetings and distribute them to all participants of the meetings within 30 days after each meeting.

**C. Design Documents**

i. Based on the Scope of Work in **Schedule B** the Contractor shall prepare, for the Principal Representative's acceptance, the Design Documents (DDs) defined in **Article 1(K)**. The DDs may be waived or modified per Utility Cost-Savings Measure or FIM as mutually agreed in writing between the Parties. Such DDs may include the following, where applicable:

- a)** Analysis of the proposed Work and the structure as such relates to any laws, codes, ordinances, and regulations
- b)** As necessary, provide site development Drawings for each proposed Utility Cost-Savings Measure

- or FIM, defining the proposed scope of the Project. Include earthwork, surface development, and utility infrastructure as applicable
- c) Plans in one-line format of the proposed structural, mechanical, and electrical systems as necessary to define size, location and quality of Equipment, materials, and constructions, for each proposed Utility Cost-Savings Measure or FIM
- d) Floor plans including proposed equipment
- e) Cut sheets and/or samples of proposed materials, equipment and system components
- f) Proposed architectural schedule, HVAC, plumbing and electrical fixture schedules
- g) Specifications, which, identifying conditions of the Contract, materials, and standards for each proposed Utility Cost-Savings Measure or FIM
- h) Design plans and documentation for each Utility Cost-Savings Measure or FIM that requires a design as agreed to with the Principal Representative
- i) Submittal of final Equipment List, Construction and Installation Schedule, Systems Start-up and Commissioning, Contractor's Maintenance Responsibilities, Political Subdivision's Maintenance Responsibilities, Contractors Training Responsibilities, and the Manifest of Ownership
- j) Submittal of an updated construction cost estimate as applicable, in substantially the same form as **Schedule F**
- ii. A code review is required to meet the local jurisdiction authority code procedure.
- iii. At the completion by Contractor and acceptance by the Principal Representative of the DDs, Contractor shall provide electronic or printed drawings and such other documents as necessary to fully illustrate the Design Development Phase to the Principal Representative. Electronic drawing files should be in a form acceptable to the Principal Representative.
- iv. Contractor shall be responsible for ensuring that the DDs, prepared by Contractor are in full compliance with applicable codes, regulations, laws and ordinances, including both technical and administrative provisions thereof. If Contractor deviates from such codes, regulations, law or ordinance, without written authorization from the State Buildings Program, Contractor, shall make such corrections in the Construction Documents as may be necessary for compliance.
- v. The Principal Representative shall notify the Contractor of acceptance or denial of the DDs in writing within 10 days of receipt.

## 6. CONSTRUCTION

### A. Construction Documents

The Construction Documents, if required, shall consist of the following:

- i. Final Construction Documents reviewed and approved by the Principal Representative in writing for constructability and code compliance
- ii. All Design Documents applicable to the Project
- iii. Any appendices, addenda, clarifications and allowances
- iv. All modifications issued pursuant to this Contract
- v. Construction and Installation Schedule
- vi. Finalized Schedule of Values

### B. Construction and Installation Schedule

The contractor shall prepare a Construction and Installation Schedule, which shall provide the timetable for the execution and completion of the Project. Such Construction and Installation Schedule shall be subject to the approval of the Principal Representative, pursuant to **Schedule A**, and shall be consistent with previously issued schedules, not exceed time limits under the Contract Documents and shall provide a schedule for the entire Project, to the extent required by the Contract Documents.

### C. Schedule of Values

Contractor shall prepare a schedule of the cost of construction, which shall be delivered to the Principal Representative for approval, and which shall be in substantially similar format as the attached **Schedule F**, and which such Contractor-submitted **Schedule F** shall be subject to review and approval by the Principal Representative. The Schedule of Values shall include, without duplication:

- i. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of

the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project

- ii. The compensation for services and the cost of work provided by Contractor
- iii. All bond premiums and costs of insurance
- iv. All Design and drafting Services
- v. All other allowable compensable services pursuant to this Contract as approved by the Principal Representative
- vi. Contingency Funds if any

**D. Approval and Completion of Construction Documents**

Except as otherwise provided in this Section, the Construction Documents shall be subject to final approval by the Principal Representative, on behalf of the Political Subdivision, and other reviewing authorities. The Principal Representative or written designee shall review documents submitted by the Contractor and shall render decisions pertaining thereto without unreasonable delay. If authorized by the Governing Body of the Political Subdivision, the Principal Representative's approval shall be issued in the form of the Notice to Proceed to Commence Construction Phase.

**E. Notice to Proceed to Commence Construction Phase**

Upon receipt of Notice to Proceed to Commence Construction Phase, Contractor shall commence the Project, as described in **Article 1**, and **Schedule B**. Notice to Proceed to Commence Construction may be issued per Utility Cost-Savings Measure or FIM.

**F. Construction Term**

The Construction Term shall commence on the Construction Commencement Date and shall terminate upon the date according to **Article 2** or the date on which:

- i. Contractor has completed the Project Work
- ii. Contractor has finalized and delivered to the Principal Representative all necessary, updated, and final documents, including schedules, exhibits, and completed Punch Lists, at the Principal Representative's determination
- iii. Contractor has delivered to the Principal Representative a Notice of Substantial Completion, which indicates that Contractor has constructed, installed, and commenced operating the Utility Cost-Savings Measures or FIMs specified in **Schedule B**
- iv. The Principal Representative has inspected and accepted the Project, according to **Article 8** and **Schedule A**, including the design, construction, installation, and operation of the Project and accepted Contractor's submittal of a Notice of Substantial Completion as demonstrated by signing and executing such Notice of Substantial Completion
- v. The Principal Representative, on behalf of the Political Subdivision, has issued a Notice of Final Acceptance

**G. Fixed Limit of Construction Cost**

Contractor shall complete the Project and be reimbursed an amount not to exceed the Fixed Limit of Construction Cost per **Article 4(A)**. Contractor shall design and construct the Project within the price specified in this **Article 6(G)** and shall furnish all of the labor and materials to perform the Work for the complete and prompt execution of the Project in accordance with the Contract Documents. The Fixed Limit of Construction Cost includes all of Contractor's Project Work responsibilities, including acquisition of plumbing and electrical building permits and conducting code review. The Governing Body of the Political Subdivision may unilaterally decrease the amount available for the Fixed Limit of Construction Cost based on the actual costs of labor and materials to Contractor, with the mutual consent of the Contractor, and assuring that the decrease in the FLCC does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. However, the Fixed Limit of Construction Cost and the Maximum Contract Price shall not be changed without an amendment or change order to this Contract, in accordance with EPC General Conditions and Fiscal Rules.

**H. Cost Reporting**

The contractor shall fully disclose all costs as per the Open Book Pricing requirements to the Political Subdivision through Applications for Contractors Payments and in such detail as the Principal Representative may request. Contractor shall maintain cost accounting recordson authorized work

performed as per **Article 24(K)**. The records shall be consistent with the Schedule of Values, **Schedule F**. Any disputes shall be subject to the terms of this Contract and **Schedule A**.

**I. Progress Meetings**

Contractor shall schedule and conduct regular progress meetings at which meetings the Principal Representative and Contractor shall discuss such matters as procedures, progress, schedule, costs, quality control and problems relating to the Project. Contractor shall record and distribute minutes of all such progress construction meetings within

4 business days

days of the meeting.

**J. Contingency Funds**

If authorized by the Governing Body of the Political Subdivision, the Principal Representative may authorize the disbursement of Contingency Funds to Contractor through an EPC Contract Change Order, as described in **Schedule A**.

**7. CONTRACTOR PERFORMANCE**

**A. Performance of Project**

Contractor shall perform the Project in accordance with the Contract Documents. Contractor shall construct and install the Project in accordance with the Construction and Installation Schedule. Contractor shall supervise and direct the Project and be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project under this Contract, subject to the review and approval of the Principal Representative and the Construction and Installation Schedule. Contractor shall design, construct and install the Utility Cost-Savings Measures or FIMs. Before purchasing any major Equipment not specified within the Construction Documents, Contractor shall consult with, and if necessary, receive the written or electronic approval of the Principal Representative regarding the price, specifications, warranty, and manufacturer of the Equipment.

**B. Contractor's Duty of Proper Performance**

Contractor shall perform the Project so as to maintain and not degrade the structural integrity of the Premises or its operating systems. Contractor shall provide the Equipment and all Services, and complete all Work contemplated under this Contract with skill and diligence to the satisfaction of the Principal Representative and in strict accordance with the provisions of the Contract Documents.

**C. Standards of Comfort**

Contractor's performance of the Project shall maintain and provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality as described in this Contract **Schedule N** (Standards of Comfort).

**D. Security**

The contractor shall meet Political Subdivision requirements for security and access to the Premises.

**8. START-UP, COMMISSIONING, INSPECTION, and ACCEPTANCE**

**A. Contractor**, in conjunction with the Political Subdivision's selected personnel, shall direct the testing of installed utilities, operations, systems and Equipment for readiness.

**B. Systems Startup and Equipment Commissioning**

Contractor shall conduct systematic commissioning of all Equipment installed as part of the Work, in accordance with the procedures specified in System Start-up and Commissioning **Schedule Q**, **Schedule A**, any operating parameters of Equipment from Equipment manufacturers, and this Contract. Contractor agrees that **Schedule Q** shall follow and use as a standard the procedures and protocol for Commissioning

located in the document *Commissioning Guidelines for Energy Saving Performance Contracts for the Colorado Energy Office*, provided by the Political Subdivision. Contractor shall test the Project and the Equipment to ensure it is functioning in accordance and compliance with any published Specifications and this Contract and to determine if modified building systems, subsystems or components are functioning properly within the Project Work. The contractor shall provide notice to the Principal Representative of the scheduled test(s) and the Principal Representative and/or its designees may be present at any or all such tests.

**C. Acceptance by Principal Representative**

Contractor's Work shall be subject to acceptance by the Principal Representative pursuant to this Contract and **Schedule A**.

**D. Correction of Deficiencies**

The contractor shall correct all deficiencies in the operation of the Project and the Equipment. Prior to Principal Representative acceptance, Contractor shall also provide Principal Representative with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule B** and any subsequently necessary and accepted design or construction documents.

**E. Inspection and Disputes**

i. The Principal Representative may inspect the Work provided under this Contract at all reasonable times and places. If any Work does not conform to this Contract, the Principal Representative may require Contractor to perform the Work again in conformity with this Contract's requirements, with no additional compensation. When defects in the quality or quantity of Work cannot be corrected by re-performance, the Principal Representative may:

- a) Require Contractor to take necessary action to ensure that the future performance conforms to Contract requirements; and/or
- b) Equitably reduce the payment due Contractor to reflect the reduced value of the Work performed.

ii. Such remedies in no way limit the remedies available to the Political Subdivision in the termination provisions of this Contract, or remedies otherwise available at law. Disputes under this Contract shall be subject to the terms of this Contract and **Schedule A**.

**9. ENVIRONMENTAL REQUIREMENTS**

**A. Excluded Material and Activities**

Pursuant to its performance of the Project, the Contractor may encounter, but is not responsible for, any work relating to Excluded Materials and Activities, as defined in **Article 1**. If performance of Work involves any Excluded Materials and Activities, the Principal Representative may terminate this Contract without penalty, liability, or responsibility, and no further performance may be required, per **Schedule A**. If, in the sole discretion of the Governing Body of the Political Subdivision, the Political Subdivision requires continued performance of this Contract, and the performance of any Project involves any Excluded Materials and Activities, the Political Subdivision shall perform or arrange for the performance of such work and shall bear the sole cost, risk, and responsibility, therefore.

**B. Discovery of Excluded Materials and Activities**

**i. Notice - Work Stoppage**

If Contractor discovers Excluded Materials and Activities, Contractor shall immediately cease work and remove all Contractor personnel or Subcontractors from the site and notify the Principal Representative. The contractor shall undertake no further work on the Premises except as authorized by the Principal Representative in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Political Subdivision or Contractor shall not constitute a default. In the event of such stoppage of Work by Contractor, the time for the completion of the Work shall be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result shall be added by Change Order.

**ii. Other Hazardous Materials**

The contractor shall be responsible for safely handling, installing, and/or disposing of any other hazardous or other materials that it may bring to the Premises.

**iii. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps**

The contractor is specifically responsible for the proper handling and disposal of Polychlorinated Biphenyl (PCB) Ballasts and Mercury Lamps. Upon discovery of PCB Ballasts and Mercury Lamps, Contractor shall enter into an agreement with an approved PCB ballast disposal contractor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services such materials. All capacitors and asphalt potting compound materials removed from the PCB Ballasts shall be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction shall be provided by the approved facility to the Principal Representative. The contractor's responsibility shall be for the proper and legal management of any of the PCB Ballasts removed as a result of the Work. Contractor shall enter into an agreement with an approved Mercury Lamp disposal contractor who shall provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the Manifest of Ownership.

**iv. Manifests of Ownership**

The Political Subdivision will sign a Manifest of Ownership for any PCB Ballasts and Mercury Lamps encountered and removed from the Premises.

**10. TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR**

**A. Training**

Contractor shall provide training to the Principal Representative and to Political Subdivision personnel regarding operation of all new and upgraded Equipment. Training shall be conducted simultaneously with Project Work and commissioning Work and shall include, but not be limited to, any HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals per **Schedule R** (Contractor Training Responsibilities). All training performed by Contractor shall (i) meet the standards established by the Equipment manufacturers, (ii) be included in the Fixed Limit of Construction Cost and (iii) be completed per **Schedule R**, in order for the Principal Representative to issue a Notice of Final Acceptance of the Project.

**B. Emissions Reductions Documentation and Reporting**

Contractor shall include information about environmental savings (not any Guaranteed Annual Cost Savings as described in **Article 14(B)**) in each annual report and advise the Principal Representative about opportunities to achieve monetary benefit from such credits.

**C. Application for Certifications**

The contractor shall provide information related to **Schedule B** necessary for the Principal Representative to submit any required Federal, State, Local performance or other applicable Certifications.

**11. MALFUNCTIONS AND EMERGENCIES**

**A.** The Principal Representative will use its best efforts to notify Contractor within 24 hours of the Principal Representative's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any pre-existing energy related equipment that might materially impact the Guaranteed Annual Cost Savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation. When the Principal Representative exercises reasonable due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify any such conditions as having a material impact upon the Guaranteed Annual Cost Savings.

**B.** If such malfunction, interruption, or alteration occurs during the Contractor's One-Year Warranty period, Contractor shall use commercially reasonable efforts to respond to any such notice within 24 hours of receipt of notice and shall promptly thereafter proceed with corrective measures. The Principal Representative will provide the Contractor with written memorialization of any telephone notice within three business days after the notice was given.

**C.** Contractor shall provide a written record of all service work performed for each malfunction or emergency. This record shall indicate the reason for the service, description of the problem and the corrective action performed.

**D.** The Political Subdivision may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. The Political Subdivision agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which



may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Political Subdivision applies to the Premises generally.

## **12. OWNERSHIP**

### **A. Ownership of Documents (Instruments of Service)**

- i. Drawings, specifications and other documents, including those in electronic form, prepared by the Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants are Instruments of Service for use solely with respect to this Project. The Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.
- ii. Upon execution of this EPC and the contract between the Contractor's and the Contractor's Architect/Engineer, the Contractor's Architect/Engineer shall grant to the Political Subdivision a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the Political Subdivision, the Contractor's Architect/Engineer's Instruments of Service solely for the purposes of constructing, using and maintaining the Project for future alterations or additions to the Project. The Contractor's Architect/Engineer shall obtain similar nonexclusive licenses from the Contractor's Architect/Engineer's consultants consistent with this Agreement. If and upon the date the Contractor's Architect/Engineer is adjudged in default, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Political Subdivision to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections and additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project for future alterations or additions to the Project.
- iii. Any unilateral use by the Political Subdivision of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the Political Subdivision's sole risk and without liability to the Contractor's Architect/Engineer and the Contractor's Architect/Engineers consultants; provided, however, that if the Political Subdivision's unilateral use occurs for completing, using or maintaining the Project as a result of the Contractor's Architect/Engineer's default, nothing in this Article shall be deemed to relieve the Contractor's Architect/Engineer of liability for its own acts or omissions or default.

### **B. As-Built Drawings/Record Drawings**

The Contractor's Architect/Engineer and its consultants shall, upon completion of the Construction Term, receive redline as-built Drawings from any Subcontractors or vendors. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed shall be incorporated by the Contractor's Architect/Engineer and its consultants into a Record Drawings document provided to the Political Subdivision in the form of an electro-media format and a reproducible format as agreed between the parties. The Contractor's Architect/Engineer shall also provide the Principal Representative with the as-built Drawings as received from the Contractor.

### **C. Ownership of Existing Equipment**

- i. Property owned by the Political Subdivision located at the Premises on the Effective Date shall remain the property of the Political Subdivision even if it is replaced or its operation made unnecessary by the Work the Contractor performs pursuant to this Contract. Contractor shall advise the Principal Representative in writing of any equipment and materials to be replaced at the Premises and the Principal Representative shall within 30 days designate in writing to Contractor which equipment and materials should not be disposed of off-site by Contractor.
- ii. The Principal Representative shall designate the location and storage for any equipment and materials that it designates to be disposed of by the Contractor. Contractor shall dispose of all equipment and materials designated by the Principal Representative as disposable off-site and in accordance with all applicable disposal laws and regulations.
- iii. Except as otherwise indicated, Contractor shall not be obligated to dispose of or be responsible for any materials identified in **Article 4(O)**.

## **13. MEASUREMENT AND VERIFICATION PLAN**

### **A. M&V Plan**

Contractor shall provide the M&V Plan as required per the CEO Measurement and Verification Policy. The M&V Plan shall outline the M&V Option for each Utility Cost-Savings Measure or FIM. The Contractor M&V Plan is presented in **Schedule D** per the requirements of **Schedule D**.

**B. M&V Services**

Contractor shall provide M&V Services and all other services required to be performed by it pursuant to **Schedule D** during the M&V Term. The contractor agrees that **Schedule D** shall follow and use as a standard the procedures and protocol as stated in the CEO Measurement and Verification Policy.

**C. Energy Usage Records and Data**

The Principal Representative shall furnish, or authorize its utility suppliers to furnish, to Contractor or its designee upon Contractor's written request, all records and data regarding energy, water, or other utilities usage and related maintenance at the Premises no later than 45 days from date of request.

**D. M&V Term**

The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute **§29-12.5-101(3)(c), C.R.S.** and no greater than the Finance Agreement Term. Upon termination of the M&V Term, the Political Subdivision shall have no further liability or responsibility for any further payment to Contractor for M&V Services. Upon termination of the M&V Term the Contractor shall have no further liability or responsibility for any M&V Services or Guarantee.

**E. M&V Fee**

The Political Subdivision shall pay to the Contractor for performance of the M&V Services a maximum not-to-exceed amount as indicated in **Article 4** and as specified in **Schedule D** and shall be included in the MCP. Cost savings to support the fee are guaranteed. The cost is not included in the financed amount. At the request of the Principal Representative, additional years of M&V may be added at a negotiated additional cost and shall not be included in the MCP.

**F. Payment**

The Political Subdivision shall pay Contractor pursuant to **Articles 6** and **7**.

**G. M&V Information Procedure**

Measurement and Verification of Savings shall be verified as outlined in **Schedule D**.

**H. Monitoring Equipment**

The contractor shall provide all additional necessary equipment required to perform the M&V Services. The Contractor may utilize existing equipment, systems, utility meters if applicable or provide the necessary equipment as described in **Schedule D**.

**I. Independent Monitor**

The Political Subdivision, at its sole expense, may hire an independent third-party monitor to review Contractor's measurement and verification reports, including verifying the prorated share of the Guarantee in any event of contract termination. The Political Subdivision shall pay the cost of any independent monitoring through a separate contract.

**14. GUARANTEE**

**A. Guarantee**

The Guarantee for the first year of the Guarantee Period is

\$101,625

as indicated on **Schedule C**. Contractor hereby warrants and guarantees that during the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C** which shall be equal to or greater than the Political Subdivision's annual and aggregate payments used to repay the project funding, as provided in **Schedule C** and as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet Guaranteed Annual Cost Savings in any year during the Guarantee Period shall be as defined in **Article 1**. Cost savings in excess of the Guaranteed Annual Cost Savings shall be solely retained by the Political Subdivision.

**B. Sufficiency of Savings**

The contractor hereby warrants, guarantees, and represents that the Guaranteed Annual Cost Savings is accurately represented in **Schedule C**.

**C. Termination**

If this Contract is terminated by Governing Body of the Political Subdivision for any reason, the Guarantee

shall be cancelled and Contractor shall have no further obligations hereunder, except to guarantee the Political Subdivision the prorated portion of the annual amount of Guarantee up to the date of termination. The prorated portion shall include any Savings incurred prior to the termination date. The Contractor shall have all of the remedies listed in this **Article 14** in addition to all other remedies set forth in other sections of this Contract and **Schedule A**.

## **15. MODIFICATION, UPGRADE OR ALTERATIONS OF EQUIPMENT**

### **A. Modification of Equipment**

Without Contractor's prior written approval, which shall not be unreasonably withheld, during the term of this Contract, the Political Subdivision shall not affix or install any accessory equipment or device on any of the Equipment if such addition changes or impairs the originally intended Savings, functions, value or use of the Equipment.

### **B. Upgrade or Alteration of Equipment**

- i. During the performance of this Contract, Contractor may, subject to prior authorization of the Governing Body of the Political Subdivision, change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:  
(a) Contractor complies with the Standards of Comfort, as set forth in this Contract, and services set forth in **Schedule N**; (b) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures enable Contractor to achieve a greater amount of energy and cost savings than the Savings, at the Premises; (c) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures are solely borne by Contractor and paid for with any Contingency Funds; and (d) any such action complies with State, federal and local law and is in the public interest of the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision. Any upgrade or alteration shall not result in any additional cost to the Political Subdivision.
- ii. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described at that time in supplemental Schedules provided to the Governing Body of the Political Subdivision for approval; provided that any replacement of the Equipment shall, unless otherwise agreed, be new and shall reduce energy consumption at the Premises more than the Equipment being replaced. Contractor shall update any and all software it owns which is necessary for the operation of the Equipment. Upon the approval of the Governing Body of the Political Subdivision, all replacements of and alterations or additions to the Equipment shall become part of this Contract and the Equipment described in **Schedule B**.

## **16. LOCATION AND ACCESS**

### **Contractor Access**

The Principal Representative shall provide access to the Premises for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours requested by Contractor that are acceptable to the Principal Representative. Contractor shall be granted immediate access to make emergency repairs or corrections as Contractor determines are needed. The contractor shall provide a written memorialization within three business days of the access specifying the emergency action taken, the reasons therefore, and the impact on the Premises.

## **17. MATERIAL CHANGES**

A Material Change as defined could be the result of the Political Subdivision not fulfilling its responsibilities as listed in **Article 22** or from actions including to but not limited to one or more of the following:

- i. manner of use of the Premises by the Political Subdivision; or
- ii. occupancy of the Premises; or
- iii. modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
- iv. facility modifications, renovations, new construction, including the replacement, addition or removal in types and quantities of energy and water consuming equipment, including plug load items, used at the Premises; or

- v. changes in utility provider or utility rate classification; or
- vi. any other conditions other than climate affecting energy or water usage at the Premises.

**A. Reported Material Changes; Notice by Political Subdivision**

The Principal Representative shall use commercially reasonable efforts to deliver to Contractor a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 14 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to Contractor of Material Changes which result because of a bona fide emergency or other situation precluding advance notice shall be deemed sufficient if given by the Principal Representative within five business days after the Principal Representative discovers the event constituting the Material Change or receives actual knowledge thereof.

**B. Other Adjustments**

The contractor shall work with the Principal Representative to investigate, identify and correct any Material Changes that prevent the Savings from being realized. As a result of any such investigation, Contractor and the Principal Representative shall determine what, if any, adjustments to the baseline shall be made in accordance with the provisions set forth in **Schedule B** and **Schedule C**. Any disputes between the Political Subdivision and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule A**.

**C. Force Majeure**

Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "*Force Majeure*") include, but are not limited to acts of God; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; or unavailability of parts, materials or supplies.

**18. INSURANCE**

Contractor shall obtain and maintain at all times during this Contract, insurance in the kinds and amounts as specified in **Schedule A**.

**19. BREACH**

**A. Defined**

In addition to any Breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner may constitute a Breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, may also constitute a Breach.

Each of the following events or conditions may constitute a Breach by Contractor:

- i. Contractor does not provide the Standards of Comfort and service set forth in **Schedule N** due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract; or
- ii. Any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made; or
- iii. The existence of any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman which is not released or otherwise cured within 30 days after notice of said filing.
- iv. Any failure by the Contractor to perform or comply with the terms and conditions of this Contract, including Breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to the Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract; or
- v. The creation or submittal by Contractor of any data related to this Contract that is intentionally

inconsistent or incorrect, or the inability to verify Contractor's reports regarding the Guarantee as determined by any independent third-party monitor retained by the Political Subdivision if such third-party monitor determines that such inability is due to intentional acts of Contractor. Except as provided herein, any creation or submittal by Contractor of any data related to this Contract that is inconsistent, incorrect, or unable to be verified shall be considered a breach and is subject to the cure period discussed herein; or

- vi. The Savings are less than the Guaranteed Annual Cost Savings and the Contractor fails to reconcile the difference as provided herein.

**B. Notice and Cure Period**

In the event of a Breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **Article 27**. If such Breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the Breach has not begun within 30 days and pursued with due diligence, the Political Subdivision may exercise any of the remedies set forth in **Article 20**. Notwithstanding anything to the contrary herein, the Principal Representative, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**20. REMEDIES**

**A. Remedies Not Involving Termination**

If Contractor is in Breach under any provision of this Contract, the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Governing Body of the Political Subdivision without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the directive of the Governing Body of the Political Subdivision and the Political Subdivision shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed that because to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the Political Subdivision; provided, that any denial of payment shall be reasonably related to the value to the Political Subdivision of the obligations not performed.

**iv. Removal**

Notwithstanding any other provision herein, the Political Subdivision may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the Principal Representative deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the Political Subdivision's best interest.

**v. Intellectual Property**

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the Political Subdivision's option **(a)** obtain for the Political Subdivision or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the Political Subdivision.

**B. Termination Prior to M&V Commencement Date**

If Contractor is in Breach under any provision of this Contract, in addition to all other remedies set forth in other sections of this Contract and **Schedule A**. The Political Subdivision may terminate this entire Contract, or any part of this Contract as provided herein or pursuant to **Schedule A**. The Political Subdivision may exercise any or all the remedies available to it, in its sole discretion, concurrently or consecutively. Exercise by the Political Subdivision of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

To the extent specified in any termination notice, Contractor shall complete and deliver to the Principal Representative for the records of the Political Subdivision all Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the Governing Body of the Political Subdivision, Contractor shall assign to the Political Subdivision all of Contractor's right, title, and interest under such terminated orders or subcontracts; provided that Contractor's obligations with respect to Contractor's Intellectual Property are set forth in **Article 12** above. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of the Contractor shall be immediately returned to the Political Subdivision. All Work Product, at the option of the Governing Body of the Political Subdivision, shall be delivered by Contractor to the Political Subdivision and shall become the Political Subdivision's personal property.

**C. Termination of M&V Term**

Notwithstanding anything to the contrary herein, the Governing Body of the Political Subdivision may terminate this Contract after the first three years of the M&V Term, and if so terminated, Contractor shall have no further obligations hereunder thereafter.

**21. REPRESENTATIONS AND WARRANTIES**

**A. Representations**

Contractor makes the following specific representations and warranties, each of which was relied on by Political Subdivision in entering into this Contract.

**i. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**ii. Legal Authority – Contractor Signatory**

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the Political Subdivision, the Contractor shall provide the Principal Representative with the records of the Political Subdivision, with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

**iii. Licenses, Permits, Etc.**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the Political Subdivision or other adjustment in MCP. Additionally, the Contractor shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any

such similar requirements necessary for Contractor to properly perform the terms of this Contract is an Event of Default by Contractor and constitutes grounds for termination of this Contract. Contractors shall use Subcontractors who are qualified and licensed in the State of Colorado to perform the work so subcontracted pursuant to the terms hereof.

The Equipment is or shall be compatible with, or functional with, and or an upgrade to all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components shall materially adversely affect each other as a direct or indirect result of Equipment installation or operation except in cases where that Principal Representative has directed, or approved, Contractor to install such equipment.

That Contractor is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the installation and perform its obligations under this Contract.

**B. Warranties**

The warranties set forth in this section and such other warranties as may be set forth in this Contract are a part of the minimum work requirements of this Contract and all remediation or other actions required by such warranties shall be performed or delivered without additional cost to the Political Subdivision.

**i. Warranties Generally Applicable**

In addition to the Warranties provided in **Schedule A**, during the Construction phase, **§2A**, of this Contract and for a period of one year following the Principal Representative's submission of either the Notice of Substantial Completion or Notice of Partial Substantial Completion for each Utility Cost-Savings Measure or FIM, whichever is longer, Contractor warrants that:

- a) The Work shall meet the Specifications set forth in the Contract Documents and be acceptable to the Political Subdivision;
- b) There are not any pending suits, claims, or actions of any type with respect to the Equipment or Work;
- c) All Equipment and Work provided are free and clear of any liens, encumbrances or claims arising by or through Contractor or any party related to Contractor;
- d) Contractor will perform all of its obligations in accordance with **Article 7, Contractor Performance**;
- e) the Equipment is new, unless otherwise agreed in writing;
- f) shall be materially free from defects in materials; and,
- g) shall function properly.

**ii. Equipment**

Specific and any material warranties that exceed the equipment One-Year Warranty period shall be provided directly by the Equipment or material manufacturers and Contractor shall assign such warranties to the Political Subdivision, after the One-Year Warranty period.

**iii. Obligations**

During the One-Year Warranty period, Contractor shall remedy any defects due to faulty materials and shall pay for, repair and replace any resulting damage to other work or any other resulting damage directly associated with the Work. Only new and not reconditioned parts may be used as a remedy. The Personal Representative shall give written notice to Contractor of observed defects or other Work requiring correction with reasonable promptness.

Contractor shall pursue rights and remedies against any Equipment manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, defects in parts, workmanship and performance during the One-Year Warranty period. The contractor shall, during the One-Year Warranty period, notify the Principal Representative whenever defects in Equipment parts or performance arise that may provide a warranty claim. During the One-Year Warranty period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property, equipment of the Political Subdivision or the Premises, or Equipment, due to Contractor's failure to exercise its warranty rights shall be borne solely by Contractor.

Notwithstanding the above, nothing in this section shall be construed to abrogate Contractor's duty to perform its other obligations under this Contract.

## **22. POLITICAL SUBDIVISION M&V TERM RESPONSIBILITIES**

The Political Subdivision is responsible during the M&V Term for:

- a) Hours of operation of the Premises or for any equipment or systems operating at the Premises; or
- b) Notifying the Contractor about equipment performance issues as they are noticed; or
- c) Permanent changes in the comfort and service parameters set forth in **Schedule N** (Standards of Comfort); or
- d) Failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule S** (Political Subdivision's Maintenance Responsibilities); or
- e) Providing the Contractor with the right once a month, with prior notice, to inspect the Premises to determine if the Political Subdivision is complying with appropriate schedules. For the purpose of determining such compliance, the checklist to be set forth at **Schedule S** (Political Subdivision's Maintenance Responsibilities), as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record the compliance of the Political Subdivision. The Political Subdivision shall make the Premises available to the Contractor for and during each monthly inspection and shall have the right to witness each inspection and Contractor's recordation on the checklist. The Principal Representative, on behalf of the Political Subdivision, may complete the checklist for the Political Subdivision at the same time. The contractor shall not interfere with any operations of the Political Subdivision during any monthly inspection.

## **23. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Except for Contractor's Intellectual Property, any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the nonexclusive property of the Political Subdivision and, all Work Product shall be delivered to the Principal Representative by Contractor upon completion or termination hereof. The nonexclusive rights of the Political Subdivision in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Principal Representative on behalf of the Political Subdivision.

## **24. GENERAL PROVISIONS**

### **A. Assignments**

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract, except in the event that any third party acquires substantially all of the assets and obligations of Contractor, at which point the State may choose, in its sole discretion, to either provide consent to the assignment or terminate this contract without further obligation to the contractor.

### **B. Subcontracts**

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the Governing Body of the Political Subdivision. The contractor shall submit to the Principal Representative a copy of each such subcontract upon request by the Principal Representative. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal, state and local laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.



**C. Binding Effect**

Except as otherwise provided in **Article 24(A)**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors, and assigns.

**D. Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**E. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

**F. Modification**

Except as specifically provided in this Contract, any modifications to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable law and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies of the Political Subdivision. This Contract is subject to such modifications as may be required by changes in federal, State or local law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

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

Any reference in this Contract to a statute, regulation, Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

**H. Survival of Certain Contract Terms**

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

**I. Taxes**

The Political Subdivision is exempt from all federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under **§§39-26-704(1), et seq., C.R.S.** The Political Subdivision shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State of Colorado imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

**J. Conflict of Interest**

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the Political Subdivision's interests. Absent the Principal Representative's prior written approval, after authorization from the Governing Body, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Political Subdivision hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Political Subdivision a disclosure statement setting forth the relevant details for the consideration of the Governing Body. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the apparent conflict constitutes a breach of this Contract.

**K. Reporting – Notification**

Reports, Evaluations, and reviews required under this **Article 24(K)** shall be in accordance with the procedures of and in such form as prescribed by the Principal Representative and in accordance with **Schedule A**, if applicable.

**i. Performance, Progress, Personnel, and Funds**

Principal Representative shall submit a report to the Contractor upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Schedule A**.

**ii. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the Principal Representative of such action and deliver copies of such pleadings to the Principal Representative.

**iii. Noncompliance**

Contractor's failure to provide reports and notify the Principal Representative in a timely manner in accordance with this **Article 24(K)** may result in the delay of payment of funds and/or termination as provided under this Contract.

**iv. Subcontracts**

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the Principal Representative in accordance with **Schedule A**. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal, state and local laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

**L. Contractor Records**

**i. Maintenance**

Contractor shall make, keep, maintain, and allow inspection and monitoring by the Principal Representative of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

**ii. Inspection**

Contractor shall permit the Principal Representative, any other authorized agent of the Political Subdivision, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The Political Subdivision reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the Political Subdivision may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the Political Subdivision may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

**iii. Monitoring**

Contractor shall permit the Political Subdivision, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the Political Subdivision shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

**iv. Final Audit Report**

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the Principal Representative, for the records of the Political Subdivision, or other designee of the Political Subdivision at the address

specified herein.

**M. Confidential Information – Political Subdivision Records**

The contractor shall comply with the provisions on this **Article 24(M)** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any Political Subdivision records, personnel records, and information concerning individuals.

**i. Confidentiality**

Contractors shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Political Subdivision Records are publicly available. Contractor shall not, without prior written approval of the Principal Representative, on behalf of the Political Subdivision, use, publish, copy, disclose to any third party, or permit the use by any third party of any Political Subdivision Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the Principal Representative, after authorization by Governing Body of the Political Subdivision. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

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

Contractor may provide Political Subdivision Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to Political Subdivision Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any Political Subdivision Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the Principal Representative upon execution of the nondisclosure provisions if requested by the Principal Representative on behalf of the Political Subdivision.

**iii. Use, Security, and Retention**

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

**iv. Incident Notice and Remediation**

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Principal Representative regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Principal Representative. Unless the Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Principal Representative, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Principal Representative at no additional cost to the Political Subdivision. The Principal Representative may

adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the Principal Representative. If Contractor cannot produce its analysis and plan within the allotted time, the Governing Body of the Political Subdivision, in its sole discretion, may perform such analysis and produce a remediation plan, or cause such analysis to be done and such remediation plan to be produced, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

**v. Data Protection and Handling**

The contractor shall ensure that all Political Subdivision Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract at all times.

**vi. Compliance**

The contractor shall review, on a semi-annual basis, all Colorado Office of Information Security (OIS) policies and procedures which OIS has promulgated pursuant to §§ 24-37.5-401. C.R.S., through 406 and 8 CCR § 1501-5, to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee. Contractor shall perform an annual SSAE16 SOC2 Type II audit including the following Trust Principles: Security, Confidentiality, and Availability, and shall provide the resulting audit report as directed by the Principal Representative.

**vii. Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the Principal Representative, including, without limitation, Political Subdivision non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

**N. Order of Precedence**

In the event of conflict or inconsistency between this Contract and its Schedules, Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. **EPC Schedule B**
- ii. General Conditions of the **EPC Schedule A**
- iii. The provisions of the main body of this Contract
- iv. The remainder of **Schedule A**
- v. Construction Documents **Article 6(A)**
- vi. The remaining Schedules
- vii. Any other attachment

**25. SCHEDULES-LIST OF**

The following Schedules are attached hereto and incorporated by reference herein:

Schedule A	General Conditions of Energy Performance Contract
Schedule B	Energy Performance Contract Description of Work
Schedule C	Guarantee
Schedule D	Measurement and Verification Services Plan
Schedule E	Code Compliance Requirements
Schedule F	Schedule of Values (Initial)
Schedule G	Projected Financial Cost and Cash Flow Analysis
Schedule H	Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term
Schedule I	Record of Reviews (as recommended by the Colorado Energy Office)
Schedule J	Certification and Affidavit Regarding Unauthorized Immigrants (UI-1)
Schedule K	Certificate of Insurance (Including Professional Errors And Omissions Liability Insurance)
Schedule L	Performance Bond (SC-6.22)
Schedule M	Labor and Material Payment Bond (SC-6.221)
Schedule N	Standards of Comfort
Schedule O	Client Construction Specifications

Schedule P	Contractors Intellectual Property
Schedule Q	System Start-up and Commissioning
Schedule R	Contractor Training Responsibilities
Schedule S	Political Subdivision's Maintenance Responsibilities
Schedule T	Notice of Substantial Completion
Schedule U	Notice of Final Acceptance
Schedule V	Owner Acknowledgment Form
Schedule W	Construction Schedule
Schedule X	Notice to Proceed

## 26. OPTIONAL PROVISIONS AND ELECTIONS

The provisions of this Article alter the preceding Articles or enlarge upon them as indicated (The Energy Performance Contract General Conditions). The Principal Representative shall mark boxes and initial where applicable.

### A. MODIFICATION OF ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

If the box below is marked, the six-month warranty inspection is not required.

☒ \_\_\_\_\_ Principal Representative initial

### B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES

If the box is marked, the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

☐ \_\_\_\_\_ Principal Representative initial

### C. MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

If the box is marked and initialed by the Principal Representative as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same wherever they appear in the contract shall be similarly deleted.

The box may be marked only for projects with an estimated value of [less than \$500,000].

☐ \_\_\_\_\_ Principal Representative initial

### D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time of Completion And Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the party's right to damages only to the extent noted.

- For the inability to use the Project, for each day after the number of calendar days specified in the Contractor's bid for the Project and the Contract for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to Zero dollars (\$0) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.
- For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor's bid for the Project and the Agreement to finally complete the Project as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to zero dollars(\$0) shall be assessed against

Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

## 27. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

### A. Political Subdivision Designee:

<i>Name and title of Person [Principal Representative of the Governing Body]</i>
<i>Department Name</i>
<i>Address</i>
<i>Town, State Zip</i>
<i>Email</i>

### B. Contractor:

Bryan Hanson, Vice President
McKinstry Essention, LLC
16025 Table Mountain Pkwy, Suite 100
Golden, Co 80401
BryanH@mckinstry.com

28. SIGNATURE PAGE

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Political Subdivision is relying on their representations to that effect.**

<p style="text-align: center;"><b>CONTRACTOR</b></p> <p style="text-align: center;"><b>McKinstry Essention, LLC</b></p> <p>By: Bryan Hanson</p> <p>Title: Vice President, Mountain Region</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>POLITICAL SUBDIVISION</b></p> <p style="text-align: center;"><b>City of Gunnison</b></p> <p>By: INSERT-Name &amp; Title of Person Signing for Governing Body</p> <p>Date: _____</p>
	<p style="text-align: center;"><b>LEGAL REVIEW</b></p> <p style="text-align: center;">INSERT-Name &amp; Title of Legal Counsel to Political Subdivision</p> <p>By: _____</p> <p style="text-align: center;">Signature - Title</p> <p>Date: _____</p>

**SCHEDULE A**  
**GENERAL CONDITIONS OF THE ENERGY PERFORMANCE CONTRACT**

**ARTICLE 1. DEFINITIONS**

- A. CONTRACT DOCUMENTS
- B. DEFINITIONS OF WORDS AND TERMS USED
- C. ENERGY PERFORMANCE CONTRACT DEFINITIONS AND TERMS USED

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- A. EXECUTION
- B. CORRELATION
- C. INTENT OF DOCUMENTS
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- C. ACCESS TO WORK
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- A. SURVEYS
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- A. GENERAL PROVISIONS
- B. SAFETY PRECAUTIONS
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**ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK documents available during construction**

**ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES**

- A. DETAIL DRAWINGS AND INSTRUCTIONS
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**ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- A. SUBMITTAL PROCESS
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**ARTICLE 14. SAMPLES AND TESTING**

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- C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)
- D. TESTING – Construction phase Measurement and Verification



**ARTICLE 15. SUBCONTRACTS**

- A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO**
- B. SUBCONTRACTOR PREQUALIFICATION**
- C. SUBCONTRACTOR PROPOSALS**
- D. SUBCONTRACTOR FORMS**
- E. SUBCONTRACTOR SUBSTITUTION**
- F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS**

**ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS**

**ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS**

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- A. TEMPORARY UTILITIES**
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**ARTICLE 22. UNSUITABLE CONDITIONS**

**ARTICLE 23. TEMPORARY FACILITIES**

- A. OFFICE FACILITIES**
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- D. DUST PARTITIONS**
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- F. SIGN**
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**ARTICLE 24. CLEANING UP**

**ARTICLE 25. INSURANCE**

- A. GENERAL**
- B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**
- C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability rising out of any auto (including owned, hired and non-owned autos).**
- D. WORKERS' COMPENSATION INSURANCE**
- E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):**
- F. BUILDER'S RISK INSURANCE**
- H. POLLUTION LIABILITY INSURANCE**
- I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS**

**ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS**

**ARTICLE 27. LABOR AND WAGES**

**ARTICLE 28. ROYALTIES AND PATENTS**

**ARTICLE 29. ASSIGNMENT**

**ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE**

**ARTICLE 31. APPLICATIONS FOR PAYMENTS**

- A. CONTRACTOR'S SUBMITTALS**
- B. Intentionally deleted.**
- C. RETAINAGE WITHHELD**
- D. RELEASE OF RETAINAGE**

**ARTICLE 32. CERTIFICATES FOR PAYMENTS**

**ARTICLE 33. PAYMENTS WITHHELD**

**ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK (**

**ARTICLE 35. CHANGES IN THE WORK**

**CHANGES TO THE EPC FIXED LIMIT OF CONSTRUCTION COST**

- A. THE VALUE OF CHANGED WORK**
- B. DETAILED BREAKDOWN**
- C. HAZARDOUS MATERIALS (add language from D/B GC)**

D.	<a href="#"><u>EMERGENCY FIELD CHANGE ORDERED WORK</u></a>
E.	<a href="#"><u>APPROPRIATION LIMITATIONS - §24-91-103.6, C.R.S., as amended</u></a>
<b><a href="#"><u>ARTICLE 36. CLAIMS</u></a></b>	
<b><a href="#"><u>ARTICLE 37. DIFFERING SITE CONDITIONS (Intentionally Deleted)</u></a></b>	
A.	<a href="#"><u>NOTICE IN WRITING (Intentionally Deleted)</u></a>
B.	<a href="#"><u>LIMITATIONS (Intentionally Deleted)</u></a>
<b><a href="#"><u>ARTICLE 38. DELAYS AND EXTENSIONS OF TIME</u></a></b>	
<b><a href="#"><u>ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS</u></a></b>	
<b><a href="#"><u>ARTICLE 40. RIGHT OF OCCUPANCY</u></a></b>	
<b><a href="#"><u>ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT</u></a></b>	
A.	<a href="#"><u>NOTICE OF COMPLETION</u></a>
B.	<a href="#"><u>FINAL INSPECTION</u></a>
C.	<a href="#"><u>NOTICE OF SUBSTANTIAL COMPLETION (Per Energy Conservation Measure and Project)</u></a>
D.	<a href="#"><u>NOTICE OF FINAL ACCEPTANCE (Per Energy Conservation Measure and Project)</u></a>
F.	<a href="#"><u>SETTLEMENT</u></a>
<b><a href="#"><u>ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE</u></a></b>	
<b><a href="#"><u>ARTICLE 43. LIENS</u></a></b>	
<b><a href="#"><u>ARTICLE 44. ONE-YEAR WARRANTIES</u></a></b>	
A.	<a href="#"><u>ONE YEAR WARRANTY OF THE WORK</u></a>
B.	<a href="#"><u>SPECIAL WARRANTIES</u></a>
<b><a href="#"><u>ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION</u></a></b>	
<b><a href="#"><u>ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES</u></a></b>	
<b><a href="#"><u>ARTICLE 47. DAMAGES</u></a></b>	
<b><a href="#"><u>ARTICLE 48. LOCAL GOVERNMENT'S RIGHT TO DO THE WORK: TEMPORARY SUSPENSION OF WORK: DELAY: DAMAGES</u></a></b>	
A.	<a href="#"><u>LOCAL GOVERNMENT'S RIGHT TO DO THE WORK</u></a>
B.	<a href="#"><u>TEMPORARY SUSPENSION OF WORK</u></a>
C.	<a href="#"><u>DELAY DAMAGES</u></a>
<b><a href="#"><u>ARTICLE 49. LOCAL GOVERNMENT'S RIGHTS TO TERMINATE CONTRACT</u></a></b>	
A.	<a href="#"><u>GENERAL</u></a>
B.	<a href="#"><u>CONDITIONS AND PROCEDURES</u></a>
C.	<a href="#"><u>ADDITIONAL CONDITIONS (Intentionally Deleted)</u></a>
<b><a href="#"><u>ARTICLE 50. TERMINATION FOR CONVENIENCE OF LOCAL GOVERNMENT</u></a></b>	
A.	<a href="#"><u>NOTICE OF TERMINATION</u></a>
B.	<a href="#"><u>PROCEDURES</u></a>
<b><a href="#"><u>ARTICLE 52. COLORADO SPECIAL PROVISIONS</u></a></b>	
<b><a href="#"><u>ARTICLE 53. MISCELLANEOUS PROVISIONS</u></a></b>	

## **ARTICLE 1. DEFINITIONS**

### **A. CONTRACT DOCUMENTS**

The Contract Documents consist of the following, some of which are procedural documents used in the administration and performance of the Agreement:

1. The Energy Performance Contract between the Local Government and Contractor and all its Schedules, and Attachments;
  - 1.1 Contractor's Investment Grade Audit and Energy Performance Contract Project Proposal Contract, All Exhibits, Addenda, and Clarifications
  - 1.2 Accepted Investment Grade Audit Report and Energy Performance Contract Project Proposal
2. Performance Bond and Labor and Material Payment Bond ;
3. These General Conditions of the Energy Performance Contract (**EPC-GC**) and if applicable, Supplementary General Conditions;
4. Drawings developed by Contractor and accepted by Local Government, prior to the Notice to Proceed to Commence Construction Phase;

5. Change Orders and any Amendments executed pursuant to Local Government law and regulations;
6. Builder's risk insurance certificates of insurance;
7. Liability, workers' compensation and professional liability errors and omissions certificates of insurance;
8. Notice to Proceed to Commence Design Phase;
9. Notice to Proceed to Commence Construction Phase;
10. Notice of Approval of Occupancy/Use
11. Notice of Partial Substantial Completion);
12. Notice of Substantial Completion;
13. Notice of Partial Final Acceptance;
14. Notice of Final Acceptance);
15. Notice of Contractor's Settlement;
16. Application and Certificate for Contractor's Payment; and
17. Other procedural and reporting documents or forms referred to in these General Conditions of the Energy Performance Contract, including but not necessarily limited to the Pre-Acceptance Checklist form (SBP-05) and the Building Inspection Report (SBP-BIR). A list of the current standard Colorado Energy Office forms applicable to this Contract may be obtained from the Principal Representative on request.

**B. DEFINITIONS OF WORDS AND TERMS USED**

1. **AGREEMENT.** The term "Agreement" shall mean the written agreement entered into by the Local Government acting by and through the Principal Representative and the Contractor for the performance of the Work and payment therefore, on the Energy Performance Contract (EPC-1). The term Agreement, when used without reference to EPC-1, may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement
2. **CHANGE ORDER.** When the Maximum Contracted Amount was increased, per EPC §7(B), the term "Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35A, The Value of Changed Work.
3. **COLORADO LABOR.** The term "Colorado labor", as provided in C.R.S. § 8-17-101(2)(a), as amended, means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the State of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days.
4. **CONSULTANT.** The term "Consultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design professionals and consultants are directly contracted to the Contractor.
5. **DAYS.** The term "days" whether singular or plural, shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used, it shall mean business days of the Local Government."
6. **DRAWINGS.** The term "Drawings" shall mean all drawings approved by appropriate Local Government officials which have been prepared by the Contractor's Architect/Engineer showing the Work to be done, except that where a list of drawings is specifically enumerated in the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.
7. **EMERGENCY FIELD CHANGE ORDER.** The term "Emergency Field Change Order" shall mean a written change order for extra Work or a change in the Work necessitated by an emergency as defined in Article 35C, executed on Exhibit XIII and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.

8. **ENERGY SERVICE COMPANY'S ARCHITECT/ENGINEER.** The term "Energy Service Company Architect/Engineer" shall mean professionals licensed or registered by the State of Colorado who have contracted with the Energy Service Company with prior approval by the Local Government, or a professional employee of the Energy Service Company, to accomplish the architectural and engineering services necessary for the Work. Nothing in this contract is intended to create a contractual relationship between such professional and the Local Government.
9. **ENERGY PERFORMANCE CONTRACT CHANGE ORDER.** The EPC Change Order is applicable only to Energy Performance Contracts and only for the original EPC MCP. The term "EPC Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35E, Changes in the EPC Fixed Limit of Construction Cost.
10. **FINAL ACCEPTANCE.** The terms "final acceptance" or "finally complete" mean the stage in the progress of the Project, after substantial completion, when all items of Work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Final Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a Partial Notice of Substantial Completion can be issued.
11. **NOTICE.** The term "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 27 (Energy Performance Contract), Notice Identification, or to such other person as either party identifies in writing to receive Notice or in the absence of the identified party, a principal of the Contractor. Notice by facsimile transmission where proper transmission is evidenced shall be adequate where facsimile numbers are included in Article 27 (Energy Performance Contract). Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.
12. **OCCUPANCY.** The term "Occupancy" means occupancy taken by the State as owner after the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Occupancy shall be the date of such first use but shall not be prior to the date of execution of the Notice of Approval of Occupancy/Use. Prior to the date of execution of a Notice of Approval of Occupancy/Use, the Local Government shall have no right to occupy, and the project may not be considered safe for occupancy/use for the intended use.
13. **OWNER.** The term "Owner" shall mean the Principal Representative.
14. **PRINCIPAL REPRESENTATIVE.** The term "Principal Representative" shall be defined, as provided in §24-30-1301(14), C.R.S., and as may be amended, as the governing board of a Local Government department, institution, or agency; or if there is no governing board, then the executive head of a Local Government department, institution, or agency, as designated by the governor or the General Assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in §24-30-1301(14), C.R.S. as amended. The Principal Representative may delegate authority. Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the project and shall be provided with a response in writing when requested.
15. **PRODUCT DATA.** The term "Product Data" shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.
16. **REASONABLY INFERABLE:** The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which Contractor could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes

into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications.

17. **SAMPLES.** The term "Samples" shall mean examples of materials or Work provided to establish the standard by which the Work will be judged.
18. **SCHEDULE OF VALUES.** The term "Schedule of Values" is defined as the itemized listing of description of the Work. The format shall be the same as Schedule F (similar to the OSA form SC-7.2). Included shall be all costs of the Project, which shall be executed in final form by Contractor and delivered to the Local Government, subject to acceptance by the Local Government, after the Effective Date, and shall include design, material, labor and other costs, and the sum of all, as described in this Contract.
19. **SHOP DRAWINGS.** The term "Shop Drawings" shall mean any and all detailed drawings prepared and submitted by Contractor, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.
20. **SPECIFICATIONS.** The term "Specifications" shall mean the written requirements for the Work to be accomplished.
21. **SUBCONSULTANT.** The term "Subconsultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design and other professionals directly contracted to the Contractor are considered subconsultants.
22. **SUBCONTRACTOR.** The term "Subcontractor" shall mean a person, firm or corporation supplying labor, materials, equipment and/or Services for Work at the site of the Project for, and under separate contract or agreement with the Contractor.
23. **SUBMITTALS.** The term "submittals" means drawings, lists, tables, documents and samples prepared by Contractor to facilitate the progress of the Work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of Subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.
24. **SUBSTANTIAL COMPLETION.** The terms "substantial completion" or "substantially complete" mean the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, as modified by any EPC Change Orders, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued.
25. **SURETY.** The term "Surety" shall mean any company providing labor and material payment and performance bonds for Contractor as obligor.

## **ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION**

### **A. EXECUTION**

Contractor, within ten (10) days from the Effective Date, as a requirement to execute the Energy Performance Contract, shall be required to furnish:

1. A fully executed Performance and Labor and Material Payment Bonds,
2. A Certificate(s) of Insurance evidencing all required insurance on standard Acord forms designed for such purpose; and
3. A Professional Liability Errors and Omissions Insurance, if warranted by the Work.

### **B. CORRELATION**

Upon execution of the Energy Performance Contract, the Contractor represents that Contractor has visited the Premises, has become familiar with local conditions and local requirements under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.

### **C. INTENT OF DOCUMENTS**

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or Work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply, so long as such more stringent or higher quality requirements are reasonably inferable. The Principal Representative shall decide with the Contractor a mutually agreeable resolution which requirements will provide the best installation. With the exception noted in the following paragraph, the precedence of the Contract Documents is as in the EPC Article 24, General Provisions:

Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the forms required by name or context and the form required by number, the form required by name or context shall control. The Contractor may obtain Colorado Energy Office forms from the Principal Representative upon request.

Nothing contained in the Energy Performance Contract Documents shall create a professional obligation or contractual relationship between the Principal Representative and any third party, including the Contractor's Architect/Engineer.

### **D. PARTNERING, COMMUNICATIONS AND COOPERATION**

In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of energy performance contracts, the Contractor and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Contract may be better achieved and issues resolved in a more fully informed atmosphere.

Contractor and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of the issuance of the Notice to



Proceed to Commence Design Phase, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

The assigned individuals shall endeavor to reach an informal agreement but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the Contract amount, and no costs associated with such plan or its development shall be recoverable under any Contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low Contract values may not justify the expense or special efforts required. In the case of small projects with an initial Fixed Limit of Construction Cost under \$500,000, the requirements of the preceding paragraph shall not apply.

### **ARTICLE 3. COPIES FURNISHED**

The ESCO shall furnish to Local Government the number of copies of Design Documents as specified in the Contract Documents (Article 5 (C) of the Energy Performance Contract), or if no number is specified, all copies reasonably necessary for the execution of the Work.

### **ARTICLE 4. OWNERSHIP OF DRAWINGS**

Refer to Article 12 of the Energy Performance Contract.

### **ARTICLE 5. CONTRACTOR'S ARCHITECT/ENGINEER'S STATUS**

In case of termination of employment or the death of the Contractor's Architect/Engineer, or the termination of the contract between the Contractor and the project's professional Architectural/Engineering firm, the Contractor will appoint a capable Architect/Engineer or contract with another professional firm, against whom the Local Government makes no reasonable objection, whose status under the Contract shall be the same as that of the former Contractor's Architect/Engineer.

### **ARTICLE 6. DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION**

#### **A. DECISIONS**

The Contractor shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

Such decisions by the Contractor shall be promptly forwarded to the Principal Representative. The Principal Representative may consent with such decision by the Contractor or amend/revise such decision at the discretion of the Principal Representative.

#### **B. JUDGMENTS**

The Local Government is the judge of the performance required by the Contract Documents as it relates to compliance with the Work and quality of workmanship and materials.

#### **C. ACCESS TO WORK**

The Principal Representative shall at all times have access to the Work. Contractor shall provide proper facilities for such access and for their observations or inspection of the Work.

#### **D. INSPECTION**

The Contractor has agreed to allow the Principal Representative or consultants to the Principal Representative to make periodic visits to the Premises to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

If the Contract, the laws, or ordinances of any public authority require any Work to be specifically tested or approved, Contractor shall give the Principal Representative and appropriate testing agency (if necessary) timely notice of its readiness for observation by the Local Government or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by Contractor. Contractor shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of the Contractor to determine the Notice required by the Local Government pursuant to the Building Inspection Record, or the equivalent form required by the Principal Representative. If any such Work is covered up without approval or consent of the Local Government or prior to any building code inspection, it must, if required by the Local Government, the Principal Representative be uncovered for examination, at Contractor's expense. If such Work is found to be not in accordance with the Contract Documents, Contractor shall pay such costs, unless he or she shall show that the defect in the Work was caused by another contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned Work may be ordered, and if so ordered, the Work must be uncovered by Contractor. If such Work be found in accordance with the Contract Documents, Contractor shall be reimbursed the cost of examination and replacement.

#### **ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION**

The Contractor shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Principal Representative. The superintendent shall not be changed except with the consent of the Principal Representative, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to the superintendent shall be as binding as if given to the Contractor. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Contractor.

The Contractor shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Principal Representative.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a uniform, thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Contractor's Work. The Contractor shall lay out all work in a manner satisfactory to the Principal Representative making appropriate permanent records for all other parts of the Work.

#### **ARTICLE 8. MATERIALS AND EMPLOYEES**

Unless otherwise stipulated, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials and Equipment shall be new and both workmanship and materials shall be of uniform quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

Contractor is fully responsible for all acts and omissions of Contractor's employees and shall at all times enforce strict discipline and good order among employees on the Premises. Contractor shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the Work assigned to him.



## **ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS**

### **A. SURVEYS**

The Principal Representative shall furnish all surveys, property lines and benchmarks deemed necessary by the Contractor, unless otherwise specified.

### **B. PERMITS AND LICENSES**

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by Contractor. Unless otherwise required, no local municipal or county building permit shall be required. The Contractor's employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

### **C. TAXES**

#### **1. REFUND OF SALES AND USE TAXES**

Contractor shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed to Commence Design or directed in the Specifications, Contractor shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by Contractor, and Contractor shall furnish such data as may be necessary to enable the Local Government, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, Contractor shall require Subcontractors to pay all local sales and use taxes required to be paid and to maintain records and furnish Contractor with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Colorado Department of Revenue shall issue to a Contractor or to a Subcontractor at any tier, a certificate or certificates of exemption per §39-26-114(1)(d), C.R.S., and §39-26-203, C.R.S.

#### **2. FEDERAL TAXES**

Contractor shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish Contractor, on request, exemption certificates.

### **D. LAWS AND REGULATIONS**

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified.

Contractor shall bear all costs arising from the performance of Work required by the Drawings or Specifications that Contractor knows to be contrary to such laws, ordinances, rules or regulations.

## **ARTICLE 10. PROTECTION OF WORK AND PROPERTY**

### **A. GENERAL PROVISIONS**

Contractor shall continuously maintain adequate protection of all Work, materials, and protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. Contractor shall be responsible for any damage, injury or loss, except to the extent:

1. Caused by agents or employees of the Principal Representative; and,

2. Due to causes beyond Contractor's control and not to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by Contractor.

**B. SAFETY PRECAUTIONS**

Contractor shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, Local Government and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Principal Representative by Contractor.

The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of this Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. Contractor shall not permit open fires within the building enclosure. Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.

Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

**C. EMERGENCIES**

In an emergency affecting the safety of life or of the Work or of adjoining property, Contractor without special instruction or authorization from the Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided Contractor has no responsibilities for the emergency, if Contractor incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency Work, the Fixed Limit of Construction Cost shall be equitably adjusted in accordance with Article 35, Changes in the Work.

**ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK**

When applicable, as determined at the sole discretion of the Principal Representative, Contractor shall keep on the Premises a printed or electronic copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. All such documents shall be available to representatives of the Local Government. In addition, Contractor shall keep on the Premises a printed or electronic copy of all approved addenda, Change Orders, EPC Change Orders, and requests for information issued for the Work.

Contractor shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Product Data submittal log, and a Sample submittal log to record the status of all necessary and required submittals.

## **ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES**

### **A. DETAIL DRAWINGS AND INSTRUCTIONS**

The Contractor shall furnish additional instructions with reasonable promptness, by means of drawings or otherwise, necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable there from.

The Work shall be executed in conformity with such instructions and Contractor shall do no Work without proper Drawings, Specifications or instructions.

The Contractor and the Principal Representative shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the Work, fixing the dates at which the various detail drawings and specification that will be required. A schedule shall be prepared, fixing the dates for the beginning of manufacture and installation of materials and for the completion of the various parts of the Work.

### **B. SCHEDULES**

#### **1. DESIGN SCHEDULE**

Prior to receiving the Notice to Proceed to Commence Design Phase (SC-8.26), the Contractor shall submit a detailed Design Phase Schedule identifying all phases of design, including time identified for the Principal Representative to review and approve design documents and specifications at each design milestone. The Design Phase Schedule shall also identify adequate time for the document coordination between the Contractor and each of its consultants.

#### **2. SUBMITTAL SCHEDULES**

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase a schedule shall be prepared by the Contractor fixing the dates for the beginning of manufacture, procure the equipment, and installation of materials for the completion of the various parts of the Work. The schedule shall be subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Principal Representative. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture, procure the equipment and/or installation.

At the time the schedule is prepared, Contractor and Principal Representative shall jointly identify the Product Data and Samples, if any, which the Principal Representative shall receive simultaneously with the Contractor for the purposes of Owner coordination with existing facility standards and systems. Transmittal of Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

#### **3. SCHEDULE OF VALUES**

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative, for approval, a complete itemized Schedule of Values (Schedule F) of the various parts of the Work, as estimated by Contractor, aggregating the total Project price. The Schedule of Values shall be in by ECM/FIM as indicated in the EPC Description of Work (Schedule B) or in such detail as the Principal Representative shall require, and be prepared on forms acceptable to the Principal Representative. Contractor shall revise and resubmit the Schedule of Values for approval when, in the opinion of the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents.

The total cost of each line item so separately identified shall be consistent with the CEO Cost and Pricing Tool.

The cost of subcontracts shall be incorporated in Schedule of Values, and when requested by the Principal Representative, shall be separately shown as line items.

This Schedule of Values (Schedule F), when approved by the Principal Representative, shall be used in preparing Contractor's applications for payment.

**4. CONSTRUCTION SCHEDULES**

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Contractor's schedule shall be a critical-path method (CPM) construction schedule. The construction schedule should start with the date of Notice to Proceed to Commence Construction for the first Work phase and include the various Work activities, change order work (when applicable), demonstration of equipment operation when called for in the Specifications, commissioning of installed equipment, post-installation verification activities, testing, closeout, and acceptance and any other steps as agreed to with the Principal Representative. The completion time shall be the time specified in the Contract.

Contractor shall submit monthly updates of the construction schedule. These updates shall reflect Contractor's "Work in place" progress.

When construction phase measurement and verification is required by the Measurement and Verification Plan, Schedule D, the Contractor shall prepare and submit to the Principal Representative a schedule for M&V activities in accordance with Article 14, Samples and Testing, Construction Phase Measurement and Verification.

**ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**A. SUBMITTAL PROCESS**

Contractor shall check and field-verify all dimensions. Contractor shall check, approve and submit to the Principal Representative in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the Specifications or required for the Work of the various trades. All Drawings and Product Data shall contain identifying nomenclature and each Submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.

The Principal Representative shall review and comment on the Specifications, Shop Drawings, and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Specifications, Shop Drawings, and Product Data, if any, shall be clearly noted, and the submittals shall be returned to Contractor for such corrections. On resubmitted Specifications, Shop Drawings, Product Data or Samples, Contractor shall direct specific attention in writing on the transmittal cover to revisions on any previously checked submittal. The Principal Representative shall promptly review and comment on, and return, the resubmitted items.

Contractor shall thereafter furnish such other copies in the form approved by the Principal Representative as may be needed for the prosecution of the Work.

**B. FABRICATION AND ORDERING**

As required by the Work, fabrication shall be started by Contractor only after receiving approved Shop Drawings by the Principal Representative. Materials shall be ordered in accordance with

approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.

**C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS**

The review and comments of the Specifications, Shop Drawings, Product Data or Samples by the Principal Representative shall not relieve Contractor from responsibility for deviations from the Drawings or Specifications, unless the Contractor has in writing called the attention of the Principal Representative to such deviations at the time of submission, nor shall it relieve Contractor from responsibility for errors of any sort in Drawings or Specifications. Review and comments on Specifications, Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Principal Representative in accordance with Articles 35 and 36.

**D. CONTRACTOR REPRESENTATIONS**

By preparing, approving, and/or submitting Specifications, Shop Drawings, Product Data and Samples, Contractor represents that Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

**ARTICLE 14. SAMPLES AND TESTING**

**A. SAMPLES**

Contractor shall furnish for approval, with such promptness as to cause no delay in his or her Work or in that of any other Contractor, applicable Samples as defined in the Schedule B.

**B. TESTING – GENERAL (Intentionally Deleted)**

**C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)**

**D. TESTING – Construction Phase Measurement and Verification**

Additional testing required during construction by the Measurement and Verification Plan, **Schedule D**, will be coordinated by the Contractor.

**ARTICLE 15. SUBCONTRACTS**

**A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO**

After the contract is awarded, the Contractor is required to provide written notice to the Principal Representative no later than twenty (20) days after deciding to perform services under this contract outside the United States or Colorado or to subcontract services under this contract to a subcontractor that will perform such services outside the United States or Colorado. The written notification must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or Colorado and the reason why it is necessary or advantageous to go outside the United States or Colorado to perform the services. All notices received by the Local Government pursuant to outsourced services shall be posted on the Colorado Department of Personnel & Administration's website. *If the Contractor knowingly fails to notify the Principal Representative of any outsourced services as specified herein, the Principal Representative, at its discretion, may terminate this contract as provided in C.R.S. § 24-102-206 (4). (Does not apply to any project that receives federal moneys.)*

**B. SUBCONTRACTOR PREQUALIFICATION**

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Contractor shall submit to the Principal Representative a complete list of all proposed pre-qualified Subcontractors. The Contractor shall submit to the Principal Representative a complete list of Consultants including the Contractor's Architect/Engineer and the professional Subconsultants. It shall be as complete as possible at the time, showing all known Subcontractors, Consultants and Subconsultants planned for the Work. The list shall be



supplemented as other Subcontractors are determined by the Contractor and any such supplemental list shall be submitted to the Principal Representative not less than ten (10) days before the Subcontractor commences Work.

The Contractor's list of all proposed pre-qualified Subcontractors shall include those Subcontractors, if any, which the Contractor indicated in its Investment Grade Audit report, would be employed for specific portions of the Work or if such indication was requested in the Request for Proposal documents issued by the Local Government.

**C. SUBCONTRACTOR PROPOSALS**

The Contractor shall request and receive proposals from the Subcontractors and subcontracts will be awarded after the proposals are tabulated in a pre-approved format which compares to each Fixed Limit of Construction Cost per Schedule B, as indicated in the finalized Schedule F, and, reviewed by, Contractor, and Principal Representative.

Should Contractor submit a proposal for subcontract Work, the proposal conditions used shall be the same as for all subcontractor proposals. These Contractor proposals for subcontract Work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and be opened with the other proposals.

**D. SUBCONTRACTOR FORMS**

All subcontracts will be between Contractor and the Subcontractors. The form of subcontracts shall be furnished to the Principal Representative for review and consent as to form, for which consent shall not be unreasonably withheld.

**E. SUBCONTRACTOR SUBSTITUTION**

The substitution of any Subcontractor listed in the Contractor's proposal shall be justified in writing not less than ten (10) days after the date of the Notice to Proceed with Design, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. Contractor shall bear any additional cost incurred by such substitutions.

**F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS**

The Contractor shall not employ any Subcontractor that the Principal Representative, within ten (10) days after the date of receipt of the Contractor's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to the Principal Representative. If a Subcontractor is deemed unacceptable, the Contractor shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the Local Government or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Contractor.

**ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS**

Contractor agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents and Procedural Documents, as applicable to the Work of such Subcontractor. Contractor further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the Local Government acting by and through its Principal Representative.

#### **ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS**

Should the Contractor cause damage to any separate contractor engaged by the Principal Representative on the Work, the Contractor agrees, upon due Notice, to settle with such separate contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the Contractor, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Contractor shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 53(I), Indemnification, provided the Contractor was given due Notice of an opportunity to settle.

#### **ARTICLE 18. SEPARATE CONTRACTS**

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate his or her Work with theirs. If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other separate contractor, the Contractor shall inspect and promptly report to the Principal Representative any defects in such Work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other separate contractor's Work as fit and proper for the reception of work, except as to defects which may develop in the other separate contractor's Work after the execution of the Contractor's Work.

To insure the proper execution of subsequent Work, the Contractor shall measure Work already in place and shall at once report to the Principal Representative any discrepancy between the executed Work and the Drawings.

#### **ARTICLE 19. USE OF PREMISES**

Contractor shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings or defined in the Work. Contractor shall not unreasonably encumber the premises with materials. Contractor shall enforce all of the Principal Representative's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

#### **ARTICLE 20. CUTTING, FITTING OR PATCHING**

The Contractor shall do all cutting, fitting or patching of Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of other separate contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted Work as the Principal Representative may direct. The Contractor shall not endanger any Work by cutting, excavating or otherwise altering the Work and shall not cut or alter the Work of any other separate contractor save with the consent of the Principal Representative.

#### **ARTICLE 21. UTILITIES**

##### **A. TEMPORARY UTILITIES**

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the placement of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to Contractor's compliance with all statutory or regulatory requirements. When actual conditions deviate from those shown in the Drawings and Specifications, Contractor shall comply with the requirements of Article 37, Differing Premises Conditions. As applicable to the Project, Contractor shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him or her and other Contractors for their Work associated with the Project and shall install and maintain all such

utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site, if applicable. Contractor shall pay for all consumption of power, light and water used by him or her and the other Contractors used during the Project as it applies to these temporary utilities, without regard to whether such items are metered by temporary or permanent meters. The Superintendent shall have full authority over all trades and Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the Notice of Substantial Completion of the Project, whichever shall be the earlier date.

**B. PROTECTION OF EXISTING UTILITIES**

Where existing utilities, such as water mains, sanitary sewers, storm sewers, computer networks, and electrical conduits, are shown on the Drawings, Contractor shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.

**C. CROSSING OF UTILITIES**

When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of Local Government, city or other public agency, public utility or private entity, Contractor shall secure proper written permission before executing such new construction. Contractor will be required to furnish a proper release before final acceptance of the Work.

**ARTICLE 22. UNSUITABLE CONDITIONS**

Contractor shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any loss, damage, or increased cost caused by ill-timed Work shall be borne by Contractor unless the timing of such Work shall have been directed by the Principal Representative, and Contractor provided Notice of any additional cost.

**ARTICLE 23. TEMPORARY FACILITIES**

**A. OFFICE FACILITIES**

Contractor shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the representatives of the Principal Representative.

**B. TEMPORARY HEAT**

Contractor shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If Contractor desires to put the permanent system into use, in whole or in part, Contractor shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve Contractor of his or her Warranty of the Work from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, Contractor shall provide manufacturers' extended warranties from the date of Contractor's use prior to the date of the Notice of Substantial Completion.

**C. WEATHER PROTECTION**

The Contractor shall, at all times, provide protection against weather, so as to maintain all Work, materials, apparatus and fixtures free from injury or damages. The Contractor shall provide weathertight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.



**D. DUST PARTITIONS**

If the Work involves Work in an occupied existing building, Contractor shall erect and maintain during the progress of the Work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

**E. BENCHMARKS**

Contractor shall maintain any Premises benchmarks provided by the Principal Representative and shall establish any additional benchmarks specified by the Principal Representative as necessary for Contractor to layout the Work and ascertain all grades and levels as needed.

**F. SIGN**

Contractor shall erect and permit one 4' x 8' sign only at the Premises to identify the Project as specified or directed by the Local Government which shall be maintained in good condition during the life of the Project.

**G. SANITARY PROVISION**

Contractor shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete Contractor shall promptly remove them from the Premises, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are permanently soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt.

**ARTICLE 24. CLEANING UP**

Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or Work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the Work clean unless more exact requirements are specified.

**ARTICLE 25. INSURANCE**

**A. GENERAL**

The Contractor shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Contractor shall continue to provide evidence of such coverage to Local Government on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days' prior Notice per Article 27 (Energy Performance Contract) by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence."

**B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**

This insurance must protect the Contractor from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Contract, whether such operations be by the Contractor or by any Subcontractor under him or anyone directly or indirectly employed by the Contractor or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

Personal Injury

\$1,000,000

The following coverages shall be included in the CGL:

1. Per project general aggregate (CG 25 03 or similar)
2. Additional Insured status in favor of the Local Government and any other parties as outlined in The Contract and must include both ONGOING Operations AND COMPLETED Operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law
3. The policy shall be endorsed to be primary and non-contributory with any insurance maintained by Additional Insureds
4. A waiver of Subrogation in favor of all Additional Insured parties
5. Personal Injury Liability
6. Contractual Liability coverage to support indemnification obligation per Article 53.I
7. Explosion, collapse and underground (xcu)

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to Work performed by Subcontract/Vendor (CG 22-94 or similar)
2. Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar)
3. If applicable to the Work to be performed: Residential or multi-family
4. If applicable to the Work to be performed: Exterior insulation finish systems
5. If applicable to the Work to be performed: Subsidence or Earth Movement

The Contractor shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in this Contract for three (3) years after completion of the project.

**C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).**

Combined Bodily Injury and Property Damage Liability  
(Combined Single Limit): \$1,000,000 each accident

Coverages:  
Specific waiver of subrogation

**D. WORKERS' COMPENSATION INSURANCE**

The Contractor shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the Local Government.

The Contractor shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

**E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):**

The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section B-D above. Coverage shall follow the terms of the underlying insurance, including the additional insured and waiver of subrogation provisions. The amounts of insurance required in Sections above may be satisfied by the Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	\$5,000,000
Aggregate	\$5,000,000

**F. BUILDER'S RISK INSURANCE**

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the Local Government elects to provide for projects with a completed value of less than \$1,000,000), the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the Notice of Acceptance.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).

Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss.

Contractor shall maintain Builders Risk coverage including partial use by Owner.

The Contractor shall waive all rights of subrogation as regards the Local Government and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. For damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the

insurance represented by such independent contracts let or to be let to the total insurance carried.

The Principal Representative, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

**G. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE**

The Contractor's Architect/Engineer or other such consultant providing professional services to the Contractor shall require to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Principal Representative. The policy, including claims- made forms, shall remain in effect for the duration of this Agreement and for at least three (3) years beyond the completion and acceptance of the Work. The Contractor's Architect/Engineer shall be responsible for all claims, damages, losses or expenses including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Contractor's Architect/Engineer, any consultant or associate thereof, or anyone directly or indirectly employed by the Contractor. The Contractor shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of the said policy as they occur.

<b>For a Fixed Limit of Construction Cost</b>	<b>Minimum Coverage per Claim</b>	<b>Minimum Coverage in the Aggregate</b>
\$999,999 and under	\$250,000	\$500,000
\$1,000,000 to \$4,999,999	\$500,000	\$1,000,000
\$5,000,000 to \$19,999,999	\$1,000,000	\$2,000,000
\$20,000,000 and above	\$2,000,000	\$2,000,000

**H. POLLUTION LIABILITY INSURANCE**

If Contractor is providing directly or indirectly work with pollution/environmental hazards, the Contractor must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. State must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.

**I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS**

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Contractor;
2. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Local government, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to the Principal Representative for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the Local Government, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance

- requirements be construed to conflict with the obligations of the Contractor concerning indemnification;
3. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the Local Government and acceptable to the Principal Representative;
  4. Receipt, review or acceptance by the Principal Representative of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Conditions.

#### **ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS**

Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond, Performance Bond, and SC-6.221, Labor and Material Payment Bond, may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Fixed Limit of Construction Cost. The expense of these bonds shall be borne by the Contractor and the bonds shall be filed with Principal Representative.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents or the bid documents, or loses its right to do business in the State of Colorado, another Surety will be required, which Contractor shall furnish to the Principal Representative within ten (10) days after receipt of Notice from the Principal Representative or after Contractor otherwise becomes aware of such conditions.

The bonds shall be maintained in full force and effect until Final Completion of the construction work but are not being furnished to cover any utility guarantee or guaranteed savings under this Contract. Upon Final Acceptance the bonds shall be released.

#### **ARTICLE 27. LABOR AND WAGES**

In accordance with laws of Colorado, **C.R.S. § 8-17-101(1)**, as amended, Colorado labor shall be employed to perform at least eighty percent (80%) of the work. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article 26 (Energy Performance Contract), Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

#### **ARTICLE 28. ROYALTIES AND PATENTS**

Contractor shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the Work. Contractor shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the Principal Representative harmless from loss on account thereof, in accordance with Article 53(I) Indemnification.

#### **ARTICLE 29. ASSIGNMENT**

Except as otherwise provided, hereafter the Contractor shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by **C.R.S. § 4-9-406**, et. seq., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative executing this Contract. Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Contractor assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called



for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the Principal Representative against the Contractor or the assignee.

### **ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE**

Contractor shall promptly remove from the premises all Work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Principal Representative. If such materials shall have been incorporated in the Work, or if any unsatisfactory Work is discovered, the Contractor shall promptly replace and re-execute his or her Work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or Work.

Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or Work is in accordance with the Contract Documents, the value of such defective or questionable material or Work shall not be included in any application for payment, or if previously included, shall be deducted by the Principal Representative from the next application submitted by the Contractor.

If Contractor does not perform repair, correction and replacement of defective Work, in lieu of proceeding by issuance of a Notice of Intent to remove condemned Work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace defective Work, deduct all costs and expenses of replacement or correction as instructed by the Local Government from Contractor's next application for payment in addition to the value of the defective Work or material. The Principal Representative may also make an equitable deduction from the Fixed Limit of Construction Cost by unilateral Change Order, in accordance with Article 33, Payments Withheld and Article 35, Changes in The Work.

If the Contractor does not remove such condemned or irreparably defective Work or material within a reasonable time, the Principal Representative may, after giving a second seven- (7) day advance Notice to the Contractor and the Surety, remove them and may store the material at the Contractor's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another separate contractor. If the Contractor does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Contractor. If the Contractor shall commence and diligently pursue such removal and replacement before the expiration of the seven-day period, or if the Contractor shall show good cause in conjunction with Schedule showing when the Work will be performed and why such removal of condemned Work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned Work.

If the Contractor disagrees with the Notice to remove Work or materials condemned or declared irreparably defective, the Contractor may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue

### **ARTICLE 31. APPLICATIONS FOR PAYMENTS**

#### **A. CONTRACTOR'S SUBMITTALS**

On or before the first day of each month and no more than five days prior thereto, Contractor may submit applications for payment for the Work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. Contractor shall submit the application for payment to the Principal Representative (Schedule F) in an itemized format in accordance with the Schedule of Values

(Schedule F), supported to the extent reasonably required by the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of Contractor's right to payments as the Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the Premises, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by Contractor of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative and shall be subject to the right to inspect the materials at the request of the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

**B. Intentionally deleted.**

**C. RETAINAGE WITHHELD**

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to five percent (5%) of the amount shown to be due the Contractor on each application for payment shall be withheld until the work required by the Contract has been performed. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.

**D. RELEASE OF RETAINAGE**

Contractor may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative for release of part or all of the withheld percentage applicable to the Work of a Subcontractor which has completed the subcontracted Work in a manner finally acceptable to Contractor and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's Contract with Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. The Principal Representative shall not be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.

Contractor's obligation under these General Conditions to warranty Work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

Contractor remains fully responsible for the Subcontractor's Work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers Contractor's request for such release satisfactory and supported by substantial reasons, the Local Government may make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's Work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's Work, and the procedures of Article 41 shall be followed for that portion of the Work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

#### **ARTICLE 32. CERTIFICATES FOR PAYMENTS**

Certificate For Contractor's Payment, as modified to include design and construction administration services and as approved by the Principal Representative and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor's Application for Payment, and shall be a representation by the Contractor to the Principal Representative that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative, the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.

#### **ARTICLE 33. PAYMENTS WITHHELD**

The Principal Representative may withhold, or on account of subsequently discovered evidence, nullify the whole or any part of any payment application on account of, but not limited to, any of the following:

1. Defective Work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of Contractor to make payments to Subcontractors for material or labor;
4. A reasonable doubt that the Contract can be completed for the balance of the Fixed Limit of Construction Cost then unpaid;
5. Damage or injury to another contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;
6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the Local Government;
7. Failure to submit a monthly construction schedule;
8. Failure of Contractor to keep Work progressing in accordance with the construction schedule;
9. Failure to keep a superintendent on the Work;
10. Failure to maintain as built drawings of the Work in progress;
11. Unauthorized deviations by Contractor from the Contract Documents; or
12. On account of liquidated damages.

In addition, the Principal Representative may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Energy Performance Contract. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Principal Representative estimates to be required to allow the Principal Representative to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys' fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

#### **ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK**

If the Principal Representative deems it inexpedient to correct Work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after ten (10) days' Notice to Contractor of intent to do so, make reasonable reductions from the amounts otherwise due Contractor on the next application for payment. Notice shall specify the amount or terms of any contemplated reduction. Contractor may during this period elect to correct or perform the Work. If Contractor does not elect to



correct or perform the Work, an equitable deduction from the Fixed Limit of Construction Cost shall be made by Change Order, in accordance with Article 35, Changes In The Work. If either party elects facilitation of this issue after Notice is given, the 10-day notice period shall be extended and tolled until facilitation has occurred.

## **ARTICLE 35. CHANGES IN THE WORK**

### **CHANGES TO THE EPC FIXED LIMIT OF CONSTRUCTION COST**

Changes to the Fixed Limit of Construction Cost within the Maximum Contract Price of an Energy Performance Contract, that the costs are negotiation determined based upon the IGA Exhibit C, Cost and Pricing Elements instead of Article 35B limits. Articles 35 A, B, C, and D apply, but The Contractor will indicate and detail in any EPC Change Order if and how the Annual Guaranteed Cost Savings is modified. Changes to the Maximum Contract Price that are not based upon an additional EPC phase or a decrease in the EPC Description of Work (EPC Schedule B) are based upon the limits in Article 35B.

*The Principal Representative may designate, or may order extra Work or make changes with or without the consent of the Contractor as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Contractor and adjusted by Change Order to the extent known at the time such change is ordered and before proceeding with the extra or changed Work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.*

The Principal Representative or the Contractor's Architect/Engineer with the consent of the Principal Representative, shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the *intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Change Order, approved by the Principal Representative, prior to proceeding with the changed Work; or 2) by an Emergency Field Change Order approved by the Principal Representative or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract Sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract Sum shall be valid unless so ordered.*

#### **A. THE VALUE OF CHANGED WORK**

1. *The value of any extra Work or changes in the Work shall be determined by agreement in one or more of the following ways:*
  - a. *By estimate and acceptance of a lump-sum amount;*
  - b. *By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;*
  - c. *By actual cost plus a fixed fee, in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed Work.*
2. *Where the Contractor and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Contractor to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Contractor's Architect/Engineer or Principal Representative. The value of the change in the Work shall be the Principal Representative's determination of the*

amount of equitable adjustment attributable to the extra Work or change. The Principal Representative's determination shall be subject to appeal by the Contractor pursuant to the claims process in Article 36, Claims.

3. Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-101, C.R.S., as amended, shall govern all Contract changes.

## **B. DETAILED BREAKDOWN**

In all cases where the value of the extra or changed Work is not known, based on unit prices in the Contractor's proposal or the Agreement, a detailed change proposal shall be submitted by the Contractor on a Change Order Proposal (SC-6.312), or in such other format as the Principal Representative, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed Work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Principal Representative:

1. Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' Work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).
2. Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.
3. Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change.
4. Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.
5. Workers' compensation costs, if not included in labor burden.
6. The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Contractor as a result of the changed Work.
7. Overhead and profit, as hereafter specified.
8. Builder's risk insurance premium costs.
9. Bond premium costs.
10. Testing costs not otherwise excluded by these General Conditions.
11. Subcontract costs.
12. Contractor's Architect/Engineer Design Services Costs.

Unless modified in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.

	OVERHEAD	PROFIT	COMMISSION
To the Contractor or to Subcontractors for the portion of work performed with their own forces:	10%	5%	0%
To the Contractor or to Subcontractors for work performed by others at a tier immediately below either of them:	5%	0%	5%

Overhead shall include: a) insurance premium for policies not previously purchased (if required) for the Project and itemized above, b) home office costs for office management, administrative

and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "Work" as used in the preceding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted Work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for Work involving both additions and credits to the amount of the Contract Sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative approves. This requirement applies equally to Work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.

Except for proposals for Work involving both additions and credits, changed Work shall be adjusted and considered separately for Work either added or omitted. The amount of adjustment for Work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.

The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra Work; however, unless specifically required in the Contract Documents, the Contractor shall have no responsibility without additional compensation to supervise the Work of persons or firms separately contracted by the Principal Representative.

### **C. HAZARDOUS MATERIALS**

The Principal Representative represents that it has undertaken an examination of the site of the Work and has determined that there are no hazardous substances, as defined below, which the Contractor could reasonably encounter in its performance of the Work. In the event the Principal Representative so discovers hazardous substances, the Principal Representative shall render harmless such hazards before the Contractor commences the Work.

In the event the Contractor encounters any materials reasonably believed to be hazardous substances which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Principal Representative, in writing. For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance," "hazardous waste," or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act. The Work in the affected area shall not, therefore, be resumed except by written agreement of the Principal Representative and the Contractor, if in fact materials that are hazardous substances have not

been rendered harmless. The Work in the affected area shall be resumed only in the absence of the hazardous substances or when it has been rendered harmless or by written agreement of the Principal Representative and the Contractor.

The Contractor shall not be required to perform Work without consent in any areas where it reasonably believes hazardous substances that have not been rendered harmless are present.

**D. EMERGENCY FIELD CHANGE ORDERED WORK**

The Principal Representative, without invalidating the Agreement may order extra Work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal. The change shall be directed using an Emergency Field Change Order form (SC-6.31E).

If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a Not To Exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor will be entitled, including direct and indirect costs of changed Work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change.

On Emergency Field Change Orders where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Contractor shall report all costs to the Principal Representative. The final adjustment of the Emergency Field Change Order amount and the adjustment to the Project time for completion shall be prepared on a normal Change Order from (SC-6.31) in accordance with the procedures described in Article 35A, The Value of Changed Work, and B, Detailed Breakdown, above. Unless otherwise provided in writing to the Principal Representative and the Contractor, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000.

**E. APPROPRIATION LIMITATIONS - § 24-91-103.6, C.R.S., as amended**

The amount of money appropriated, as shown on the Design/Build Maximum Price Agreement (SC 9.0), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf, which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Design Build Guaranteed Maximum Price Agreement (SC-9.0), unless one of the following occurs: (1) the Contractor is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a Contractor remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for any order, directive or instruction by the Contractor's



*Architect/Engineer or the Principal Representative to perform Work which is determined to be within the performance required by the Contract Documents; the Contractor's remedy shall be as described elsewhere in these General Conditions.*

### **ARTICLE 36. CLAIMS**

It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of issues relating to the Premises, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of this Article 36, Claims, Contractor shall 1) first, informally present the claim to Principal Representative as described hereafter, and 2) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal Contract controversy, and 3) seek resolution outside the Contract as provided by the Procurement Code.

If the Contractor claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Principal Representative affecting the scope of the Contractor's Work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Contractor shall have the right to assert a claim for such costs or time.

Unless it is the Principal Representative's judgment and determination that the Work is not included in the performance required by the Contract Documents, the Contractor shall proceed with the work as originally directed. Where the Contractor's claim involves a dispute concerning the value of Work unilaterally directed pursuant to Article 35A2 the Contractor shall also proceed with the Work as originally directed while his or her claim is being considered.

The Contractor shall give the Principal Representative Notice of any claim promptly but in no case later than ten (10) days from the date of the occurrence affecting the claim. The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes in The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Contractor with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Contractor and Principal Representative agree) after receipt of the Contractor's Notice of claim regarding such instructions or alleged act or omission. If no response to the Contractor's claim is received within seven (7) business days of Contractor's Notice (or at such other time as the Contractor and Principal Representative agree) and the instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Contractor's claim that is denied.

If the Contractor disagrees with the Principal Representative's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within

ten (10) days of receipt of the Principal Representative's decision denying the claim. A "contract controversy," as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Contractor. The Contractor's failure to proceed with Work directed by the Principal Representative or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Contractor and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Contractor may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Contractor in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Contractor of the reasons for any denial. Unless the claim has been decided by the Principal Representative (as opposed to delegates of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. In the event of a denial, the Principal Representative shall give Notice to the Contractor of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 *et seq*, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Contractor's giving Notice (or such other date as the Contractor and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission has not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Contractor's claim.

Either the Contractor or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Contractor shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.

Disagreement with the decision of the Principal Representative to deny any claim or denying the contract controversy shall not be grounds for the Contractor to refuse to perform the Work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Contractor shall proceed diligently with the Work directed.

In all cases where the Contractor proceeds with the Work and seeks equitable adjustment by filing a claim and or statutory appeal, the Contractor shall keep a correct account of the extra cost, in accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.

The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the Work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.

## **ARTICLE 37. DIFFERING SITE CONDITIONS**

### **A. NOTICE IN WRITING**

Contractor shall promptly, and where possible before conditions are disturbed, give the Principal Representative Notice in writing of:

1. subsurface or latent physical conditions at the Premises differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,
2. unknown physical conditions at the Premises, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.

The Principal Representative shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in Contractor's costs of performance of any part of the Work required by the Contract Documents, whether or not such Work is changed as a result of such conditions, an equitable adjustment shall be made and the Fixed Limit of Construction Cost shall be modified in accordance with Article 35, Changes In The Work.

If the time required for completion of the Work affected by such materially differing conditions will extend the Work the time for completion shall also be equitably adjusted.

#### **B. LIMITATIONS**

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the Notice required in Article 37A, Notice In Writing, above The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the Principal Representative to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Contractor for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Contractor requests a final inspection pursuant to Article 41A, Notice Of Completion.

#### **ARTICLE 38. DELAYS AND EXTENSIONS OF TIME**

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Local Government, Principal Representative, or of any employee or agent of either, or by any separately employed Contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the Work as the Contractor shall be able to show he or she could not have avoided by the exercise of due diligence.

The Contractor shall provide Notice in writing to the Principal Representative within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.

All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Principal Representative as part of a claim for extra cost, if any, in accordance with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.

Except as otherwise provided in this paragraph, no extension of time shall be granted when the Contractor has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on Contractor's CPM schedule.

Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Contractor would have Worked but was unable to Work, with each separate extension figured to the nearest whole calendar day.

For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Contractor shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

#### **ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS**

Contractor and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them or any decision of the Local Government. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non-requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; who, if appointed, shall be accepted for this purpose by both Contractor and the Principal Representative.

The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.

Any dispute, claim, question or disagreement arising from or relating to the Contract or an alleged breach of the Contract may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.

The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:

1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;
2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available, including the Local Government;



7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through (10) this Article 39 no more than three times during the course of the Project;
9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,
10. to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

In accordance with State Fiscal Rules and the Colorado Special Provisions, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the Local Government to participate in any form of binding alternative dispute resolution.

A partnering plan developed as described in Article 2D, Partnering, Communications and Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under \$500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 26, Optional Provisions and Elections (Energy Performance Contract). When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

#### **ARTICLE 40. RIGHT OF OCCUPANCY**

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and Contractor shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work, but may impact equipment warranty start date.

Prior to any occupancy of the Project, an inspection shall be made by the Principal Representative, the Contractor's Architect/Engineer, and the Contractor. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended and the Notice of Substantial Completion has been issued for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The Contractor shall assist the Principal Representative in completing and executing the Approval of Occupancy/Use, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 41, Completion, Final Inspection, Acceptance and Settlement.

#### **ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT**

##### **A. NOTICE OF COMPLETION**

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Contractor shall file a written Notice with the Principal Representative that the Work, or such discrete physical portion, in the opinion of the Contractor, is substantially complete under the terms of the Contract. The Contractor shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Principal Representative shall determine after inspection. If the Contractor's Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Contractor and the Notice shall then be resubmitted.

**B. FINAL INSPECTION**

Within ten (10) days after Contractor files written Notice that the Work is substantially complete, the Principal Representative, and Contractor shall make a "final inspection" of the Project to determine whether the Work is substantially complete and has been completed in accordance with the Contract Documents. Contractor shall provide the Principal Representative an updated punch list in sufficient detail to fully outline the following:

1. Work to be completed, if any; and
2. Work not in compliance with the Drawings or Specifications, if any.

A final punch list shall be made by the Local Government in sufficient detail to fully outline to Contractor:

1. Work to be completed, if any;
2. Work not in compliance with the Drawings or Specifications, if any; and
3. unsatisfactory Work for any reason, if any.

The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Contractor to the Principal Representative.

**C. NOTICE OF SUBSTANTIAL COMPLETION**

Notice of Substantial Completion shall establish the date of substantial completion of the Project, as indicated on the form of Notice of Substantial Completion. Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.

The Notice of Substantial Completion shall not be issued until the following have been fully established:

1. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
2. All required corrections noted on the Building Inspection Record shall have been completed unless the Principal Representative, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
3. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by Contractor's employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
4. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
5. Contractor has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the Work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the

exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 26, D, of the Energy Performance Contract, the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed punch-list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.

Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

Contractor shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Principal Representative a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project.

**D. NOTICE OF FINAL ACCEPTANCE**

The Notice of Final Acceptance shall establish the completion date of the Project. It shall not be authorized until Contractor shall have performed all of the Work to allow completion and approval of the Pre-Acceptance Checklist (SBP-05).

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the Work described in Change Orders executed during late stages of the Project where a later completion date for the Change Ordered Work is expressly provided for in the Contract as amended by the Change Order, provided the Work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the Work included for which final payment will be made.

**E. SETTLEMENT**

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Pre-Acceptance Checklist (SBP-05) have been completed, the Notice of Acceptance (SBP-6.27) issued, and the Notice of Contractors Settlement (SBP-7.3) published. If the Work shall be substantially completed, but final acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of Contractor, the Principal Representative in his or her discretion may release to Contractor such amounts as may be in excess of three times the cost of completing the unfinished Work or the cost of correcting the defective Work, as estimated and approved by Local Government. Before the Principal Representative may issue the Notice of Contractor's Settlement and advertise the Project for final payment, Contractor shall have corrected all items

on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

1. Delivered to the Local Government:
  - a. All warranties;
  - b. All statements to support local sales tax refunds, if any;
  - c. Three (3) complete bound sets of required operating maintenance instructions;
  - d. One (1) set of as-built Contract Documents showing all job changes, as necessary, and,
  - e. Electronic files of all above items in a format acceptable to Principal Representative.
2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.

Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or Contractor from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

Except as hereafter provided, on the date of final settlement thus advertised, provided Contractor has submitted a written Notice to the Local Government that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due Contractor, the Principal Representative shall withhold from Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished Work or the cost to repair defective Work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with Contractor, as set forth in the published Notice of Contractor's Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative. At the expiration of the ninety (90) day period, the Principal Representative shall authorize to release to Contractor all other money not the subject of such action at law or withheld based on the cost to complete unfinished Work or the cost to repair defective Work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the Work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to Contractor subject to the same conditions regarding unpaid claims.

#### **ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE**

Contractor warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. Contractor further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for defects or faulty materials or workmanship. The Contractor shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Contractor shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which were not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 44, One-Year Warranties.

#### **ARTICLE 43. LIENS**

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, §38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public Work in that final payment may not be made to a Contractor until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to Contractor in the amount of such claims.

#### **ARTICLE 44. ONE-YEAR WARRANTIES**

##### **A. ONE YEAR WARRANTY OF THE WORK**

The Contractor shall warrant to remedy defects and repair or replace the Work for a period of one year from the date of the Notice of Substantial Completion or from the dates of any Partial Notices of Substantial Completion issued for discrete physical portions of the Work. Contractor shall remedy any defects due to faulty materials or workmanship and shall pay for, repair and replace any damage to other Work resulting therefrom, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. Contractor shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that Contractor shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other Work requiring correction with reasonable promptness. Such Notice shall be in writing to Contractor.

The one year warranty of Contractor's Work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued.

##### **B. SPECIAL WARRANTIES**

In case of Work performed for which product, manufacturers or other special warranties are required by the Specifications, Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative upon completion of the Work.

These products, manufacturers or other special warranties, as such, do not in any way lessen Contractor's responsibilities under the Contract. Whenever warranties are required by the Specifications for a longer period than one year, such longer period shall govern. Administration of such extended warranties may be the responsibility of the specific manufacturer of the product being warranted and not necessarily the Contractor, unless explicitly stated in the Contract Documents.



#### **ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION**

The Principal Representative and Contractor together shall make at least one (1) complete inspection of the Work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Eleven-Month Warranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year warranties do not run reasonably concurrent.

Written punch lists and reports of these inspections shall be made by Contractor and forwarded to the Principal Representative within ten (10) days after the completion of the inspections. The punch list shall itemize all warranty items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. Contractor shall immediately initiate such remedial Work as may be necessary to correct any deficiencies or defective Work shown by this report, and shall promptly complete all such remedial Work in a manner satisfactory to the Principal Representative.

If Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving Contractor ten (10) days written Notice of intention to do so.

The Local Government, acting by and through the Principal Representative, shall be entitled to collect from Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.

#### **ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES**

*It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed (SC-6.26).*

*It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.*

*Contractor acknowledges that subject to any limitations in the Lease Purchase Agreement, the Fixed Limit of Construction Cost is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to which the parties may have stipulated in the Agreement, which stipulation was based on the Fixed Limit of Construction Cost. Contractor agrees that Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.*

*It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 26 of the Energy Performance Contract, Modification of Article 46, are reasonable times for these stages of completion of the Work, taking into such*

consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.

If Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the Local Government, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 26 of the Energy Performance Contract, Modification of Article 46.

Contractor and Contractor's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

In the first instance, specified in Article 26 of the Energy Performance Contract, Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

In the second instance, specified in Article 26 of the Energy Performance Contract, Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 26 of the Energy Performance Contract, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in Contractor's bid for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

In the third instance, when so specified in both Articles 26 of the Energy Performance Contract, both types of liquidated damages shall be separately assessed where those delays have occurred.

The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.

The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed substantial completion or final acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.

#### **ARTICLE 47. DAMAGES**

If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Contractor's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at his

or her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty Work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Contractor to which Article 36, Claims, applies shall be made in accordance with Article 36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Contractor.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

#### **ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES**

##### **A. STATE'S RIGHT TO DO THE WORK**

If after receipt of Notice to do so, Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to Contractor and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due Contractor, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld.

##### **B. TEMPORARY SUSPENSION OF WORK**

The State shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:

1. Unsuitable weather;
2. Faulty workmanship;
3. Improper superintendence;
4. Contractor's failure to carry out orders or to perform any provision of the Contract Documents;
5. Loss of, or restrictions to, appropriations;
6. Conditions, which may be considered unfavorable for the prosecution of the Work.

If it should become necessary to stop Work for an indefinite period, Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and Contractor shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.



Notice of suspension of Work shall be provided to Contractor in writing stating the reasons therefore. Contractor shall again proceed with the Work when so notified in writing.

Contractor understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. Contractor further acknowledges and agrees that in such event that State may, upon Notice to Contractor, suspend the Work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For the Public Interest of State. If the Contract is not so terminated the Fixed Limit of Construction Cost and the Contract time shall be equitably adjusted at the time the Principal Representative directs the Work to be recommenced and gives Notice that the revenue to fund the appropriation is available.

### **C. DELAY DAMAGES**

The Principal Representative and the State of Colorado shall be liable to Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the Work only when and to the limited extent that such hindrance or delay is caused by an act or omission within the control of the Principal Representative or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to Contractor for the payment of such a claim only if Contractor has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the Work before proceeding with the changed Work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.

## **ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT**

### **A. GENERAL**

*If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of Contractor's creditors; or if a receiver should be appointed to take over Contractor's affairs, or if he or she should fail to prosecute Contractor's Work with due diligence and carry the Work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on Contractor and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases the right to exercise such remedy.*

*In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once..*

### **B. CONDITIONS AND PROCEDURES**

- 1. The Principal Representative may terminate the services of Contractor, which termination shall take effect immediately upon service of Notice thereof on Contractor and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of the Contractor's service, Contractor shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes*

over the Work and if the unpaid balance of the Contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of Contractor, such excess shall be paid to Contractor. If, however, the cost, expenses and damages as certified by the State exceed such unpaid balance of the Contract price, Contractor and the Contractor's Surety shall pay the difference to the Principal Representative.

2. The Principal Representative may require the Surety on Contractor's bond to take control of the Work and see to it that all the deficiencies of Contractor are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of Contractor pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the Work to be done by the Surety, the Surety being substituted for Contractor as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.
3. The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of Contractor, or the Surety if the Surety has been substituted for Contractor, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from Contractor and his or her Surety, or to deduct from any payment then or thereafter due Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor, provided the State approves the amount thus charged to Contractor. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes InThe Work.

**C. ADDITIONAL CONDITIONS**

If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and Contractor shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by Contractor shall not be subject to such conversion.

**ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE**

**A. NOTICE OF TERMINATION**

The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of Work hereunder shall be effected by delivery to Contractor of a Notice of such termination specifying the extent to which the performance of Work under the Contract is terminated and the date upon which such termination becomes effective.

**B. PROCEDURES**

After receipt of the Notice of termination, Contractor shall, to the extent appropriate to the termination, cancel outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any Work terminated by the Notice. With respect to such canceled commitments, Contractor agrees to:

1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or

*she may require, which approval or ratification shall be final for all purposes of this clause; and,*

- 2. assign to the Principal Representative, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of Contractor under the orders and subcontracts, consultants, subconsultants terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.*

*The Contractor shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such three (3)-month period or authorized extension thereof. Upon failure of the Contractor to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.*

*Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of §24-107-101, C.R.S., as amended and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.*

*Subject to the preceding provisions, Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by Contractor and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which Contractor is unable to cancel, Contractor shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract and Contractor shall be paid the agreed amount.*

*The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.*

*Contractor agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:*

- 1. Completed or partially completed plans, Drawings and information; and,*
- 2. Materials or equipment produced or in process or acquired in connection with the performance of the Work terminated by the Notice.*

*Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Principal Representative to the Contractor under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property*

*related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.*

*Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, §§24-109-101, et seq., C.R.S., as amended.*

**ARTICLE 51. CONTRACTOR'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT**

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Contractor or of any one employed by him, then the Contractor may on seven (7) days' written Notice to the Principal Representative stop Work or terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained on any plant or material, and a reasonable profit only for the Work completed. If the Principal Representative shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Contractor any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Contractor within thirty (30) days then the Contractor may on ten (10) days' written Notice to the Principal Representative stop Work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Contractor any amount not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the Contractor may terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained upon any plant or materials, and profit only for Work completed.

## **ARTICLE 52. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)**

These Special Provisions apply to all contracts except where noted in italics.

### **A CONTROLLER'S APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

### **B FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **C GOVERNMENTAL IMMUNITY**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

### **D INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

### **F COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **G CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

### **H BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

### **I SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of



this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**J     EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §24-18-201 and §24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**K     VENDOR OFFSET. §24-30-202(1) and §24-30-202.4, C.R.S.**

**[Not applicable to intergovernmental agreements]** Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**L     PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.**

**[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**M     PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.**

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has

produced one form of identification required by **§24-76.5-103, C.R.S.** prior to the Effective Date of this Contract.

#### **ARTICLE 53. MISCELLANEOUS PROVISIONS**

##### **A. CONSTRUCTION OF LANGUAGE**

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with Article 2C, the intent of the Contract. .

##### **B. SEVERABILITY**

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

##### **C. CAPTIONS AND REFERENCES**

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

##### **D. AUTHORITY**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

##### **E. INTEGRATION OF UNDERSTANDING**

This Contract is intended as the complete integration of all understandings between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

##### **F. JURISDICTION AND VENUE**

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

##### **G. NO THIRD PARTY BENEFICIARIES**

Except for the Parties' respective successors and assigns described in §24.B, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

##### **H. WAIVER**

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

##### **I. INDEMNIFICATION**

###### **1. General Indemnification**

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

## **2. Confidential Information Indemnification**

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

## **J. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$500,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply.

Contractor agrees to be governed, and to abide, by the provisions of CRS 24-102-205, 24-102-206, 24-103-601, 24-103.5-101, 24-105-101, and 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Principal Representative, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS 24-105-102(6)), or (b) under CRS 24-105-102(6), exercising the debarment protest and appeal rights provided in CRS 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

## **K. CORA DISCLOSURE**

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act.



## EPC SCHEDULE B

### ENERGY PERFORMANCE CONTRACT DESCRIPTION OF WORK

*This schedule should include at minimum the following and any other critical information from the EPC Project Proposal (as this is not included in the EPC documents).*

1. Executive Summary: Provide an executive summary which includes key participants, the final utility cost saving measures and facility improvement measures, a table of the measures by building/location, a table of the measures indicating annual savings (usage and dollars), installation cost (soft fees and construction cost), and simple payback or return on investment value. Include any other financial factors that support the project (potential grants, rebates, other sources of funds).
2. Building and Infrastructure data only for the locations included in the Work in a format similar to **IGA Exhibit B** tables (without cost information).
3. Baseline Period Utility Consumption (per IGA Exhibit A).
4. By Utility Cost Saving Measure or FIM, explain the scope of the Work.
  - a) As appropriate, include equipment (controls, lighting, heating, cooling, other) to be installed, modified, removed, and any associated important items necessary to describe the Work.
  - b) As known, list any manufacture (or pre-approved equal), size, types, quantities as necessary for clarity.
  - c) Include occupancy schedules, temperature set points, standards of comfort and all other important variables that impact the performance of the measure. In particular are parameters that could be modified after installation and impact the long-term performance of the measure.
  - d) If a measure has operation or maintenance savings, indicate how they are determined and verified, and the term of the savings.
  - e) M&V option.
  - f) Include specific exclusions or assumptions as applicable.
  - g) Warranty: by manufacturer, ESCO, or contractor, national distributor, none?
5. Installation Plan and Schedule: construction process, normal or after-hours work, unique access requirements, etc.
6. Training: by manufacturer, ESCO, or contractor; on-site, web based, electronic media, other?
7. Known Environmental Problems: indicate if ESCO or Political Subdivision needs to remediate the problem.

Executive Summary: Provide an executive summary which includes key participants, the final utility cost saving measures and facility improvement measures, a table of the measures by building/location, a table of the measures indicating annual savings (usage and dollars), installation cost (soft fees and construction cost), and simple payback or return on investment value. Include any other financial factors that support the project (potential grants, rebates, other sources of funds).

#### 1. Executive Summary - Key Participants

Contact	Organization	Title	Phone	Email
Ben Cowan	City of Gunnison	Acting City Manager and Finance Director	970.641.8162	<a href="mailto:BCowan@gunnisonco.gov">BCowan@gunnisonco.gov</a>
Chris Green	City of Gunnison	Facilities Manager	970.641.8342	<a href="mailto:CGreen@gunnisonco.gov">CGreen@gunnisonco.gov</a>
Brian Firestone	McKinstry	Energy Account Executive	303.215.4040	<a href="mailto:BrianFire@McKinstry.com">BrianFire@McKinstry.com</a>
Aaron Skroch	McKinstry	Program Manager-Energy	303.215.4064	<a href="mailto:AaronSk@McKinstry.com">AaronSk@McKinstry.com</a>
Renee Wahlman	McKinstry	Building Energy Engineer	720.657.2957	<a href="mailto:reneew@McKinstry.com">reneew@McKinstry.com</a>
Jeremy Wiest	McKinstry	Lighting Solutions Developer	717.497.7426	<a href="mailto:JeremyWi@mckinstry.com">JeremyWi@mckinstry.com</a>
Daniel Finney	McKinstry	Senior Energy Engineer-Renewables	720.239.2931	<a href="mailto:DanielFin@mckinstry.com">DanielFin@mckinstry.com</a>
Tim De Leo	McKinstry	Energy Engineer - Renewables	508.813.9472	<a href="mailto:TimDel@mckinstry.com">TimDel@mckinstry.com</a>
Martin Beggs	McKinstry	Program Manager-Renewables	720.386.5941	<a href="mailto:MartinB@McKinstry.com">MartinB@McKinstry.com</a>
Maya Combs-Hurtado	McKinstry	Building Energy Engineer-Technical Services	720.758.9238	<a href="mailto:MayaC@McKinstry.com">MayaC@McKinstry.com</a>
Kristina Autobee	McKinstry	Construction Manager	303.204.1060	<a href="mailto:KristinaA@mckinstry.com">KristinaA@mckinstry.com</a>
Aaron Samsel	McKinstry	Senior Project Engineer	720.577.2010	<a href="mailto:AaronSa@McKinstry.com">AaronSa@McKinstry.com</a>
DeLynne Southern	Colorado Energy Office	Technical Specialist	303.866.2391	<a href="mailto:DyLynne.southern@state.co.us">DyLynne.southern@state.co.us</a>

### Executive Summary - Final Utility Cost Savings Measures and Facility Improvement Measures

Includes applicable facilities, annual savings (usage and dollars), installation cost (soft fees and construction cost), and simple payback or return on investment value.

Includes other financial factors that support the project (potential grants, rebates, other sources of funds).

ECM Name	Construction Cost *	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Rebates/Grants/ IRA Direct Payment **	Non-Guaranteed Net Customer Cost (with Incentives)
01.02 Replace Radiant Infrared Heaters Total	\$76,043	\$100	1	\$350	\$450	\$0	\$76,043
01.03 Replace Standing Pilot Heaters Total	\$10,919	\$117	1	\$0	\$117	\$0	\$10,919
01.05 Expand Snow Melt System Total	\$109,175	(\$1,064)	-6	\$0	-\$1,064	\$0	\$109,175
01.06 Add HVAC System w-Zone Controls and Duct Mods Total	\$95,610	\$329	-1	\$0	\$329	\$0	\$95,610
03.02 Replace Make Up Air Unit Total	\$212,811	\$3,237	18	\$0	\$3,237	\$0	\$212,811
04.01 Building Automation System Total	\$399,772	\$21,568	113	\$0	\$21,568	\$0	\$399,772
04.05 Night Setback for Ice Machine Total	\$0	\$3,786	28	\$0	\$3,786	\$0	\$0
05.01 Retro-Commissioning and TAB Total	\$33,950	\$0	0	\$0	\$0	\$0	\$33,950
05.02 Recommissioning Total	\$46,215	\$0	0	\$0	\$0	\$0	\$46,215
06.01 Address Ice Melt Humidity Issues from Zamboni Total	\$38,470	\$0	0	\$0	\$0	\$0	\$38,470
09.01 LED Lighting Upgrades Total	\$323,794	\$12,305	90	\$2,742	\$15,047	\$2,362	\$321,432
09.02 Ballpark Lighting Total	\$453,132	\$3,733	27	\$212	\$3,945	\$0	\$453,132
09.04 Pond LED Lighting Upgrades Total	\$33,000	\$18	0	\$0	\$18	\$0	\$33,000
10.01 Solar PV Total	\$722,188	\$21,407	156	\$0	\$21,407	\$232,003	\$490,185
10.03 Assessment of Solar Panels Total	\$6,000	\$0	0	\$0	\$0	\$0	\$6,000
11.02 New Generators Total	\$835,629	\$0	0	\$0	\$0	\$84,000	\$751,629
13.01 Air Sealing and Weather Stripping Total	\$169,506	\$11,841	71	\$0	\$11,841	\$0	\$169,506
17.01 Pool Water Treatment Total	\$388,730	\$4,950	1	\$16,427	\$21,377	\$0	\$388,730
21.01 EV Charging Station- Level 2 Total	\$42,476	(\$433)	-3	\$0	-\$433	\$6,000	\$36,476
<b>Grand Total</b>	<b>\$3,997,420</b>	<b>\$81,894</b>	<b>495</b>	<b>\$19,731</b>	<b>\$101,625</b>	<b>\$324,365</b>	<b>\$3,673,055</b>

**Total Less \$750k DOLA Grant \$2,923,534**  
**Total Less \$914k Capital from Customer \$2,009,359**  
**Simple Payback (yrs) 19.8**

\* Since design, project management and other project related costs are distributed among the ECMs, the project cost will not go up or down by exactly the amounts shown here if an ECM or ECMs are removed from scope.

\*\* Rebates, grants and the IRA ITC Direct Payment are contingent on final approval from providers and are not guaranteed.

**Executive Summary - Table of Project Cost Including Subcontractor Costs, Fees and Mark-ups:**

Project Summary	TEA Contract % Maximum	Actual %	Amount
<i>Technical Energy Audit</i>	-	-	<i>\$41,314</i>
Pre-Construction Costs	-	-	-
Design and Engineering	8.0%	8.0%	\$278,081
Pre-Construction Services	3.0%	2.9%	\$100,000
Other Pre-Construction Costs	3.0%	2.9%	\$100,000
	<i>Pre-Construction Cost Sub-Total</i>		<i>\$478,081</i>
Construction Costs	-	-	-
Trade Subcontracts	-	46.7%	\$1,627,035
Design/Build Subcontracts	-	21.6%	\$751,671
Direct Purchase Equipment	-	0.0%	\$0
Construction Management	7.0%	6.9%	\$240,000
Project Engineering	2.0%	1.9%	\$65,500
General Conditions	1.5%	1.4%	\$49,200
Construction Completion	4.0%	3.9%	\$135,000
Other Construction Costs	4.0%	3.9%	\$136,001
	<i>Construction Cost Subtotal</i>		<i>\$3,004,407</i>
Estimated Project Amount			\$3,482,488
Profit	10.0%	10.0%	\$348,249
Contingency	5.0%	3.6%	\$125,370
Total Funded Amount (Before Incentives)	-	-	\$3,997,420

Fees listed above for Design and Engineering, Construction Management, Project Engineering, General Conditions, Construction Completion, Other Construction Costs, and Profit shall be applied to all Changes, and included in Change Order Proposals as applicable.

2. Building and Infrastructure data only for the locations included in the Work in a format similar to **IGA Exhibit B** tables (without cost information).
  - Refer to **Section 3 Facility Descriptions** of the Investment Grade Audit Report.
3. Baseline Period Utility Consumption (per IGA Exhibit A).
  - Refer to **Section 2.5 – Base Year Annual Summary Per Building** of the Investment Grade Audit Report.
4. By Utility Cost Saving Measure or FIM, explain the scope of the Work.
  - a) As appropriate, include equipment (controls, lighting, heating, cooling, other) to be installed, modified, removed, and any associated important items necessary to describe the Work.
    - Refer to **Section 4.1 – Energy Conservation Measure Matrix, Summary, Cost Breakdown and Cash flow** of the Investment Grade Audit Report
  - b) As known, list any manufacture (or pre-approved equal), size, types, quantities as necessary for clarity.
    - Refer to **Section 4.5 – Energy Conservation Measures** of the Investment Grade Audit Report
  - c) Include occupancy schedules, temperature set points, standards of comfort and all other important variables that impact the performance of the measure. In particular are parameters that could be modified after installation and impact the long-term performance of the measure.
    - Refer to **KPI Matrix** table in **Investment Grade Audit Report Appendix C - Measurement and Verification Plan** of the Investment Grade Audit Report
  - d) If a measure has operation or maintenance savings, indicate how they are determined and verified, and the term of the savings.
    - Refer to **Investment Grade Audit Report Appendix A - Lighting Audit** of the Investment Grade Audit Report for description of methodology behind lighting maintenance savings.
    - Refer to **Investment Grade Audit Report Appendix H – Savings Calculations** of the Investment Grade Audit Report for description of methodology behind the building envelope maintenance savings.
  - e) M&V option.
    - Refer to **Investment Grade Audit Report Appendix C - Measurement and Verification Plan** of the Investment Grade Audit Report
  - f) Include specific exclusions or assumptions as applicable.

The following Exclusions and Clarifications are applicable to the project. Refer to ECM Descriptions and Scopes of Work in Appendices for specific Scope of Work exclusions and clarifications relative to the measures in the project.

**Pricing:**

- Due to the market uncertainty surround material and equipment prices, McKinstry's price is valid through May 31<sup>st</sup>, 2023. McKinstry reserves the right to update the project pricing based on current labor, material and equipment costs should contract execution not occur before this date.
- Pricing excludes Davis-Bacon, Prevailing Wage and Build America Buy America (BABA) Act requirements.
- At the time this report was submitted, the details of the Inflation Reduction Act, Solar PV Direct Payment had not yet been finalized by the Federal Government so McKinstry cannot yet guarantee this value. Any shortfall in the final ITA Direct Payment amount is the responsibility of the City.
- At the time this report was submitted, the Department of Homeland Security, Emergency Management grant had not yet been submitted so the value of the grant shown in the Cash Flow cannot yet be guaranteed by McKinstry. Any shortfall in the final grant amount is the responsibility of the City.
- Pricing excludes State, County, City and any special use taxes.

- Bond Amount Calculated at 50% of the Construction Cost
- Bond does not cover savings guarantee.

**Rebates:**

- McKinstry has agreed to carry the risk associated with being responsible for the final value and collection of rebates on the project. McKinstry will provide the necessary information to apply for the rebates and request assistance from the City if needed.

**Network & Remote Access:**

- The City will be responsible for providing any network drops to support the Building Automation System, Solar PV installation and LED Field Lighting scopes of work. McKinstry has include the cost to pull the CAT6 wire from the existing switches to these locations but will need the City to provide the final terminations. Required ethernet connections shown below:
  - Community Center: 1 for Solar PV systems and 1 for the Building Automation System (most likely located in the upper-level mechanical room)
  - City Shop: 1 for the Solar PV system (near the electrical panels in the main shop.
  - WWTP: 1 for the Solar PV system (on the northeast side of the main office/lab building)
  - Police Department: 1 for the PV System (in the mechanical room on the east end of the building)
  - Ice Arena: 1 for the PV system (Near the main electrical panel on east side of the building near the fishing pond)
  - Jorgensen Sports Complex: 1 for the LED Field lighting (in Andy's office at the Ice Arena if possible)
- The City is responsible for providing remote access as required for access to the Solar PV systems and Building Automation Systems for trending, monitoring and M&V activities.

**Scheduled Shutdowns:**

- McKinstry will provide a one-week notice for any heating, cooling, controls, or electrical related shutdowns required to complete the implementation of the scope measures listed in this document.

**Temporary Heating and Cooling Exclusion:**

- Temporary heating and cooling are excluded from all scope items. Any measures that may impact occupant comfort will be timed and implemented in such a manner as to minimize the impact on interior space conditions, but McKinstry cannot guarantee a standard of comfort will be maintained during the entire construction period.

**Commissioning-Specific Exclusions:**

- The following items are excluded from the Commissioning scope of work unless noted in the scope of work for each measure:
  - Existing HVAC systems that are not slated to be replaced as part of this project.
  - Existing building automation systems that are not slated to be replaced as part of this project.
  - Existing building automation systems that are not slated to be replaced as part of this project.
  - Existing lighting control systems.
  - Fire protection and life safety systems.
  - Elevators.
  - Back-up generators and emergency power systems that are not associated with McKinstry's scope of work.
  - Electrical services/devices not associated with McKinstry Work.
  - Egress and/or emergency systems.

**Lead and Asbestos Exclusions:**

- The current project scope does not include any testing or abatement of asbestos containing

materials or surfaces with lead containing paint.

**General Engineering and Construction Exclusions:**

- Future operation, maintenance and capital replacement costs
- All work to be conducted during normal business hours except for solar PV cutover and indoor lighting in occupied spaces which will be done after hours.
- McKinstry reserves the right to adjust energy savings if we find insufficient outside air quantities or inoperable equipment during design, construction, or commissioning.
- Seismic analysis, provisions, or bracing are excluded.
- Rectification of existing code violations, damage or deficiencies are excluded.

**Solar Photovoltaic Exclusions & Clarifications:**

- Solar photovoltaic (PV) system operation & maintenance is excluded.
- Inverters and modules have warranties that extend beyond the EPC warranty. These will be transferred to the customer at project closeout.
- Pricing for WWTP solar PV system based on there not being any hazardous materials in the soil.
- Solar PV cut-over to occur after normal business hours. McKinstry may require that the back-up generators at the Police Department and WWTP operate during the solar PV cut-over to make sure that any system in the facility that must remain online are able to operate while the PV system is tied into the building electrical system.
- Removal/Replacement of Solar PV Systems to accommodate future roof repairs/replacements is excluded.
- Weather: If damage from extreme weather events occurs during any performance period, McKinstry will not be responsible for the loss of energy production.
- If utility required curtailment of power/energy occurs during any performance period, McKinstry will not be responsible for the loss of energy production.
- If utility loss of power due to utility outage or customer caused outage occurs during any performance period, McKinstry will not be responsible for the loss of energy production.
- If vandalism or other unforeseeable accidents occur during any performance period, McKinstry will not be responsible for the loss of energy production.
- If a manufacturer becomes insolvent at any point and the equipment performance is negatively impacted, McKinstry is not responsible for the loss of energy production..

**Lighting Exclusions & Clarifications:**

- Lighting color temperature shall be 4000K.
- Existing field lighting poles are presumed to be in good condition, code compliant and suitable for new LED modules.
- 10-year warranty on field lighting
- Pond lighting pole foundation pricing based on 2000 psi soil conditions.
- Included is a 10% linear lamp holders (sockets) replacement allowance, \$1,000 max.
- Included is a 10% lens replacement allowance, \$2,500 max.
- Egress lighting, unless integral to the fixture(s) with proposed upgrades, is excluded.
- Gunnison County Prevailing Wage Labor Rates are for the posted time period and subject to change as contracts are negotiated and renewed, or as tax rates change.
- Electrical repairs, replacement, rework or modifications beyond the initial fixture connection are expressly excluded.
- Assumes access to spaces via hard keys, key FOBs, or other means of room access.
- Assumes reasonable access to all fixtures.
- Subcontractors will be required to carry Performance Bonds.
- McKinstry has included extra stock of 1% of lamp leave-behind.
- Subcontractor shall procure Electrical Permit where required .
- Temporary power and lighting.
- Trash removal from site is included.



- Daily trash and housekeeping clean-up is included.
- Recycling of lamps and ballasts is included.
- Storage of Material and Supplies is included.
- Scope includes 1-for-1 replacement of existing emergency battery backup units, where identified in audit, plus an additional (50) emergency battery backup unit allowance for audit discrepancies.
- Lighting Codes and Design Standards
  - Illuminating Engineering Society of North America (IESNA)
  - Federal Energy Management Program (FEMP) 80/20 Option A Plan.
- Lighting Exclusions
  - Future operation & maintenance costs
  - Electrical Permit fees (except for new electrical services)
  - Special insurance requirements per the specifications.
  - Professional liability insurance coverage.
  - Code updates or replacement of defective equipment associated with existing systems.
  - Unforeseen or hidden conditions.
  - CAD drawings/reflective ceiling plans/stamped electrical drawings.
  - Utility Company fees and charges.
  - Asbestos/leaking PCBs/Lead removal is not included in the quoted price above and will need to be removed by a qualified contractor if encountered.
  - Removal of construction waste to points beyond the immediate area of work.
  - Painting or refinishing of newly exposed surfaces, as a result of the lighting upgrades.
  - Costs of schedule delays or impacts.
  - Job site security.
  - Electrical plan review & associated fees.
  - Demolition services (make safe only).
  - New lens replacements past allowance.
  - New lamp holders (sockets) past allowance.
  - Repair or replacement of existing electrical circuitry and conduit.
  - Emergency battery backup units past allowance.
  - Modifications to dedicated emergency lighting system and circuits.
  - Modifications to emergency lighting units and remote heads.
  - Additional stock of kits, new fixtures, and sensors.
  - Mock-up installation of lighting retrofits and lighting controls.

**Mechanical, Electrical, Plumbing and Controls Exclusions & Clarifications:**

- Any warranties that extend beyond the EPC warranty will be transferred to the customer at project closeout.
- Generator pricing based two new generators, each serving a separate main electrical service (one for the original section and one for the pool addition), each of different voltages. Pricing based on acceptance of this design by the state inspector.
- Generator and EV Charging Station pricing based on there being no hazardous materials present in the soils where trenching, bollards and concrete pad earthwork is to occur.
- Piping, ductwork, and coils (condition, size, insulation, performance) beyond our point of connection are excluded. Based on our discussions with the client, there are no concerns with these items that we should be included in the scope of work.
- Harmonic filtration assessments, SCCR analysis, coordination, or provisions, are excluded.
- Equipment sub-meters, unless already incorporated into the piece of equipment.
- Surge protection engineering and devices, unless specifically noted as included, are excluded.
- Replacement of energy or electric sub-meters is excluded.
- The City will calibrate CO and CO2 sensors or replace the cartridges/elements at the manufacturer's recommended intervals to maintain proper operation after installation.

- g) Warranty: by manufacturer, ESCO, or contractor, national distributor, none?
- The warranty for the project will fall under the standard warranty terms of the State of Colorado EPC contract. If any installed materials have warranties that extend beyond the terms of the standard warranty, they will be transferred to City of Gunnison at project closeout.
5. Installation Plan and Schedule: construction process, normal or after-hours work, unique access requirements, etc.
- Refer to Section 4.4 Preliminary Construction Schedule of the Investment Grade Audit Report for preliminary construction schedule and Exhibit W the detailed construction schedule.
6. Training: by manufacturer, ESCO, or contractor; on-site, web based, electronic media, other?
- Refer to EPC Contract Schedule R for Contractor training responsibilities
7. Known Environmental Problems: indicate if ESCO or Political Subdivision needs to remediate the problem.
- No known Environmental Problems.

## **EPC SCHEDULE C GUARANTEE**

### **Guarantee**

“Guarantee” means the warranty and guarantee made by the ESCO in **EPC Article 14** that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in this **EPC Schedule C** which shall be equal to or greater than the Political Subdivision’s annual payments used to repay the project funding, as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in ESCO directly remunerating the Political Subdivision the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the Governing Body’s consent, which shall not be unreasonably withheld, ESCO may implement additional Utility Cost-Savings Measures or FIMs, at no cost to the Political Subdivision, which may generate additional annual cost savings in future years of the Performance Period to offset future Guaranteed Annual Cost Savings shortfall.

### **Guarantee Period**

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO as set forth in **EPC Schedule D**.

### **Guaranteed Annual Cost Savings**

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings, Guaranteed Annual Operations and Maintenance Cost Savings, and Annual Vehicle Fleet Operational and Fuel Cost Savings guaranteed by ESCO resulting from the Project that shall occur for each year of the Guarantee Period pursuant to this **EPC Schedule C**. Guaranteed Annual Utility Cost Savings shall be determined by ESCO’s Measurement and Verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in this **EPC Schedule C**.

#### **Guaranteed Annual Operations and Maintenance Cost Savings**

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the Political Subdivision’s operation and maintenance budget.

#### **Guaranteed Annual Utility Cost Savings**

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in **Schedule C**.

#### **Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings**

“Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings” means measurable and verifiable

ESCO guarantees that the Project shall result in Guaranteed Annual Cost Savings to the Political Subdivision, as indicated, for each year of the Guarantee Period, as presented in the following **Table C1**.

## EPC SCHEDULE C GUARANTEE

**Table C1: Guaranteed Annual Cost Savings**

Year	Annual Savings						
	Electric	Nat Gas	Water & Sewer *	Total Utility Savings	O&M	IRA ITC, Generator Grant & EV Charger Grant	Total Savings
0	\$15,142	\$18,316	\$2,835	\$36,293	\$11,839		\$48,132
1	\$46,861	\$30,527	\$4,725	\$82,113	\$19,731	\$322,003	\$423,847
2	\$49,210	\$32,206	\$5,906	\$87,322	\$20,323	\$0	\$107,645
3	\$51,916	\$33,978	\$7,383	\$93,277	\$20,933	\$0	\$114,209

Year 0 in the above table represent the construction period which commences upon contract execution. The Year 0 savings shown represents the construction period savings for measures that will be installed during the first 5 months of construction. Year 1 "IRA ITC, Generator Grant & EV Charger Grant" savings includes Inflation Reduction Act Direct Payment (\$232,003), Dept of Homeland Security Emergency Mgmt Grant (\$84,000) and Charge Ahead Colorado EV Charging Station Grant (\$6,000). Energy, water, sewer and O&M rates in Years 2 through 4 have been escalated according to the escalation rates shown in Table C2 below.

**Table C2: Baseline Rates and Annual Escalation Rates:**

Year	Electric Consumption \$/kWh	Electric Demand \$/kW	Natural Gas \$/Therm	Water * \$/kgal	Sewer * \$/kgal	M&V	O&M
Baseline Rates	Refer to Table C2-A through C2-E below					N/A	N/A
Year 2 Escalator (%)	5.5%		5.5%	25.0%	25.0%	3.0%	3.5%
Year 3 Escalator (%)	5.5%		5.5%	25.0%	25.0%	3.0%	3.5%
Year 4 Escalator (%)	5.5%		5.5%	5.5%	5.5%	3.0%	3.5%

\* Water & Sewer savings escalated 25% in years 2 and 3 to account for increased City rates to help fund new Water Treatment Plant

## EPC SCHEDULE C GUARANTEE

**Table C2-A: Baseline Year Electrical Rates**

Electric Rate Analysis	
Rate	1/10/2023
	kWh
Commercial/ City Government	\$0.10
Residential	\$0.09

**Table C2-B: Baseline Year Natural Gas Rates**

Gas Rate Analysis	
	9/8/2022
	CCF
Facility Charge	\$28.59000
Commodity Cost	\$0.76326
Franchise Fee	\$0.05000
G-DSMCA-Volumetric Charge	\$0.00185
Upstream Cost	\$0.20280
Deferred Gas Cost	\$0.06250
Sum	\$1.0804

**Table C2-C: Baseline Year Water Rates**

Water Rate Analysis	
	1/10/2023
	kGal
1-5000	\$2.633
5001-10000	\$3.130
10000-15000	\$3.693
over 15001	\$3.693

**Table C2-D: Baseline Year Sewer Rates**

Sewer Rate Analysis	
	1/10/2023
Commercial	
gallon	\$0.005
kGal	\$4.670

## EPC SCHEDULE C GUARANTEE

**Table C2-E: Utility Rates by Facility**

Facility		Electric Rate Schedule	Natural Gas Rate Schedule	Water & Sewer Rate Schedule
		Government	General	General
City Hall	CIH	X	X	X
City Shop	CIS	X	X	X
Electric Shop	ELS	X	X	X
Garage and Fleet Storage (Blue Barn)	BLU	X	X	X
Jorgensen Park - Event Center/Indoor Ice Rink	INICE	X	X	X
Jorgensen Park - Locker Room Building	LOC	X	X	X
Jorgensen Park - Outdoor Covered Ice Rink	OUICE	X	X	X
Van Tuyl Ranch - Rental Residence	VTR	X	X	X
Police Department and Dispatch	PDD	X	X	X
Community Center	GCC	X	X	X
IOOF Park - Restroom Building	IOOF	X	X	X
Legion Park - Restroom Building	LEG	X	X	X
Meadows Park - Restroom Building	MEA	X	X	X
Storage Building	GSB	X	X	X
Tomichi Riverway Park - Restroom Building	TOM	X	X	X
Wastewater Treatment Plant - Commissioning	WWTP	X	X	X
Water Department Shop	WDS	X	X	X
Jorgensen Park - Restroom Building	JCO	X	X	X
Jorgensen Park - Parks Building	PARK	X	X	X
Char Mar Park - Restroom Building	CHAR	X	X	X

## EPC SCHEDULE C GUARANTEE

**Table C3A: Proposed Unit Savings and Guaranteed Annual Cost Savings for Project for Year 1 - Total by ECM**

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
01.02 Replace Radiant Infrared Heaters Total	\$100	1	\$350	\$450	100%	0	95	0	0	0	0	100	0	0
01.03 Replace Standing Pilot Heaters Total	\$117	1	\$0	\$117	100%	0	112	0	0	0	0	117	0	0
01.05 Expand Snow Melt System Total	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
01.06 Add HVAC System w-Zone Controls and Duct Mods Total	\$329	-1	\$0	\$329	100%	-13,732	1,575	0	0	(1,322)	0	1,651	0	0
03.02 Replace Make Up Air Unit Total	\$3,237	18	\$0	\$3,237	97%	7,911	2,361	0	0	762	0	2,475	0	0
04.01 Building Automation System Total	\$21,568	113	\$0	\$21,568	97%	21,602	18,387	25	25	2,080	0	19,279	91	118
04.05 Night Setback for Ice Machine Total	\$3,786	28	\$0	\$3,786	100%	39,319	0	0	0	3,786	0	0	0	0
05.01 Retro-Commissioning and TAB Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
05.02 Recommissioning Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
06.01 Address Ice Melt Humidity Issues from Zamboni Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
09.01 LED Lighting Upgrades Total	\$12,305	90	\$2,742	\$15,047	98%	129,827	-187	0	0	12,502	0	(196)	0	0
09.02 Ballpark Lighting Total	\$3,733	27	\$212	\$3,945	98%	38,761	0	0	0	3,733	0	0	0	0
09.04 Pond LED Lighting Upgrades Total	\$18	0	\$0	\$18	100%	183	0	0	0	18	0	0	0	0
10.01 Solar PV Total	\$21,407	156	\$0	\$21,407	98%	222,300	0	0	0	21,408	0	0	0	0
10.03 Assessment of Solar Panels Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
11.02 New Generators Total	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
13.01 Air Sealing and Weather Stripping Total	\$11,841	71	\$0	\$11,841	97%	50,195	6,683	0	0	4,834	0	7,008	0	0
17.01 Pool Water Treatment Total	\$4,950	1	\$16,427	\$21,377	100%	-6,874	1,046	545	545	(662)	0	1,096	1,969	2,547
21.01 EV Charging Station- Level 2 Total	(\$433)	-3	\$0	-\$433	100%	-4,500	0	0	0	(433)	0	0	0	0
<b>Grand Total</b>	<b>\$81,894</b>	<b>495</b>	<b>\$19,731</b>	<b>\$101,625</b>	<b>98%</b>	<b>484,365</b>	<b>29,115</b>	<b>570</b>	<b>571</b>	<b>46,644</b>	<b>0</b>	<b>30,527</b>	<b>2,060</b>	<b>2,665</b>

Does not include any future utility or O&M cost escalations. Excludes construction period savings.



## EPC SCHEDULE C GUARANTEE

**Table C3B: Proposed Unit Savings and Guaranteed Annual Cost Savings for Project for Year 1 by ECM by Facility**

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-CHAR LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
Char Mar Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
01.03-CIS Replace Standing Pilot Heaters	\$117	1	\$0	\$117	100%	0	112	0	0	0	0	117	0	0
01.06-CIS Add HVAC System w-Zone Controls and Duct Mods	\$329	-1	\$0	\$329	100%	-13,732	1,575	0	0	(1,322)	0	1,651	0	0
09.01-CIS LED Lighting Upgrades	\$858	6	\$131	\$989	98%	9,041	-12	0	0	871	0	(13)	0	0
10.01-CIS Solar PV	\$3,312	24	\$0	\$3,312	98%	34,394	0	0	0	3,312	0	0	0	0
13.01-CIS Air Sealing and Weather Stripping	\$647	3	\$0	\$647	97%	0	617	0	0	0	0	647	0	0
City Shop Total	\$5,263	33	\$131	\$5,394	99%	29,703	2,291	0	0	2,860	0	2,402	0	0
09.01-ELS LED Lighting Upgrades	\$170	1	\$14	\$184	98%	1,823	-5	0	0	176	0	(5)	0	0
13.01-ELS Air Sealing and Weather Stripping	\$374	2	\$0	\$374	97%	0	357	0	0	0	0	374	0	0
Electric Shop Total	\$544	3	\$14	\$558	98%	1,823	352	0	0	176	0	369	0	0
13.01-BLU Air Sealing and Weather Stripping	\$251	1	\$0	\$251	97%	0	240	0	0	0	0	251	0	0
Garage and Fleet Storage (Blue Barn) Total	\$251	1	\$0	\$251	97%	0	240	0	0	0	0	251	0	0
05.01-CIH Retro-Commissioning and TAB	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
09.01-CIH LED Lighting Upgrades	\$2,886	21	\$316	\$3,202	98%	30,675	-65	0	0	2,954	0	(68)	0	0
13.01-CIH Air Sealing and Weather Stripping	\$258	1	\$0	\$258	97%	90	238	0	0	9	0	249	0	0
Gunnison City Hall Total	\$3,144	23	\$316	\$3,460	98%	30,765	172	0	0	2,963	0	181	0	0
04.01-GCC Building Automation System	\$21,568	113	\$0	\$21,568	97%	21,602	18,387	25	25	2,080	0	19,279	91	118
09.01-GCC LED Lighting Upgrades	\$3,087	23	\$756	\$3,843	98%	32,937	-81	0	0	3,172	0	(84)	0	0
10.01-GCC Solar PV	\$7,087	52	\$0	\$7,087	98%	73,591	0	0	0	7,087	0	0	0	0
10.03-GCC Assessment of Solar Panels	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
11.02-GCC New Generators	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
13.01-GCC Air Sealing and Weather Stripping	\$3,281	17	\$0	\$3,281	97%	416	3,091	0	0	40	0	3,241	0	0
17.01-GCC Pool Water Treatment	\$4,950	1	\$16,427	\$21,377	100%	-6,874	1,046	545	545	(662)	0	1,096	1,969	2,547
21.01-GCC EV Charging Station- Level 2	(\$433)	-3	\$0	-\$433	100%	-4,500	0	0	0	(433)	0	0	0	0
Gunnison Community Center Total	\$39,540	202	\$17,183	\$56,723	99%	117,172	22,444	570	571	11,284	0	23,532	2,060	2,665

Does not include any future utility or O&M cost escalations. Excludes construction period savings.

## EPC SCHEDULE C GUARANTEE

**Table C3B: Proposed Unit Savings and Guaranteed Annual Cost Savings for Project for Year 1 by ECM by Facility – *continued***

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-GSB LED Lighting Upgrades	\$543	4	\$248	\$791	98%	5,693	-5	0	0	548	0	(5)	0	0
Gunnison Storage Building Total	\$543	4	\$248	\$791	98%	5,693	-5	0	0	548	0	(5)	0	0
05.02-WWTP Recommissioning	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
09.01-WWTP LED Lighting Upgrades	\$2,029	15	\$411	\$2,440	98%	21,069	0	0	0	2,029	0	0	0	0
10.01-WWTP Solar PV	\$3,675	27	\$0	\$3,675	98%	38,162	0	0	0	3,675	0	0	0	0
13.01-WWTP Air Sealing and Weather Stripping	\$2,996	22	\$0	\$2,996	97%	31,113	0	0	0	2,996	0	0	0	0
Gunnison Waste Water Treatment Plant Total	\$8,700	64	\$411	\$9,111	98%	90,344	0	0	0	8,700	0	0	0	0
09.01-WELL LED Lighting Upgrades	\$506	4	\$64	\$570	98%	5,255	0	0	0	506	0	0	0	0
Gunnison Well Sites Total	\$506	4	\$64	\$570	98%	5,255	0	0	0	506	0	0	0	0
09.01-IOOF LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
IOOF Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-JCO LED Lighting Upgrades	\$27	0	\$11	\$38	98%	284	0	0	0	27	0	0	0	0
09.02-JCO Ballpark Lighting	\$3,733	27	\$212	\$3,945	98%	38,761	0	0	0	3,733	0	0	0	0
09.04-JCO Pond LED Lighting Upgrades	\$18	0	\$0	\$18	100%	183	0	0	0	18	0	0	0	0
Jorgensen Complex Total	\$3,778	28	\$223	\$4,001	99%	39,228	0	0	0	3,778	0	0	0	0
01.02-INICE Replace Radiant Infrared Heaters	\$100	1	\$350	\$450	100%	0	95	0	0	0	0	100	0	0
03.02-INICE Replace Make Up Air Unit	\$3,237	18	\$0	\$3,237	97%	7,911	2,361	0	0	762	0	2,475	0	0
04.05-INICE Night Setback for Ice Machine	\$3,786	28	\$0	\$3,786	100%	39,319	0	0	0	3,786	0	0	0	0
09.01-INICE LED Lighting Upgrades	\$809	6	\$327	\$1,136	98%	8,443	-4	0	0	813	0	(4)	0	0
10.01-INICE Solar PV	\$3,583	26	\$0	\$3,583	98%	37,212	0	0	0	3,583	0	0	0	0
13.01-INICE Air Sealing and Weather Stripping	\$1,647	8	\$0	\$1,647	97%	137	1,558	0	0	13	0	1,633	0	0
Jorgensen Park- Event Center/ Indoor Ice Rink Total	\$13,162	87	\$677	\$13,839	98%	93,021	4,010	0	0	8,958	0	4,204	0	0
13.01-LOC Air Sealing and Weather Stripping	\$117	1	\$0	\$117	97%	1,212	0	0	0	117	0	0	0	0
Jorgensen Park- Locker Room Building Total	\$117	1	\$0	\$117	97%	1,212	0	0	0	117	0	0	0	0
01.05-OUICE Expand Snow Melt System	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
06.01-OUICE Address Ice Melt Humidity Issues from Zamboni	\$0	0	\$0	\$0	100%	0	0	0	0	0	0	0	0	0
Jorgensen Park- Outdoor Covered Ice Rink Total	(\$1,064)	-6	\$0	-\$1,064	100%	-628	-957	0	0	(60)	0	(1,003)	0	0
09.01-PARK LED Lighting Upgrades	\$263	2	\$90	\$353	98%	2,727	0	0	0	263	0	0	0	0
13.01-PARK Air Sealing and Weather Stripping	\$1,347	10	\$0	\$1,347	97%	13,992	0	0	0	1,347	0	0	0	0
Jorgensen Park- Parks Building Total	\$1,610	12	\$90	\$1,700	98%	16,719	0	0	0	1,610	0	0	0	0

Does not include any future utility or O&M cost escalations. Excludes construction period savings.

EPC SCHEDULE C  
GUARANTEE

Table C3B: Proposed Unit Savings and Guaranteed Annual Cost Savings for Project for Year 1 by ECM by Facility – *continued*

ECM Name	Annual Utility Savings	Annual CO2 Savings ( Metric Tons)	Annual Operational Savings	Total Annual Savings	Guarantee Multiplier	Electricity [kWh]	Gas [Therms]	Water [kGal]	Sewer [kGal]	Electricity [\$]	Electric Demand [\$]	Gas [\$]	Water [\$]	Sewer [\$]
09.01-LEG LED Lighting Upgrades	\$211	2	\$27	\$238	98%	2,195	0	0	0	211	0	0	0	0
Legion Park- Restroom Building Total	\$211	2	\$27	\$238	98%	2,195	0	0	0	211	0	0	0	0
09.01-MEA LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
Meadows Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-PDD LED Lighting Upgrades	\$752	6	\$190	\$942	98%	7,963	-14	0	0	767	0	(15)	0	0
10.01-PDD Solar PV	\$3,750	27	\$0	\$3,750	98%	38,941	0	0	0	3,750	0	0	0	0
13.01-PDD Air Sealing and Weather Stripping	\$454	3	\$0	\$454	97%	3,236	136	0	0	312	0	143	0	0
Police Department and Dispatch Total	\$4,956	36	\$190	\$5,146	98%	50,141	122	0	0	4,829	0	128	0	0
09.01-TOM LED Lighting Upgrades	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
Tomichi Riverway Park- Restroom Building Total	\$17	0	\$10	\$27	98%	180	0	0	0	17	0	0	0	0
09.01-VTR LED Lighting Upgrades	\$0	0	\$17	\$17	98%	0	0	0	0	0	0	0	0	0
Van Tuyl Ranch- Rental Residence Total	\$0	0	\$17	\$17	98%	0	0	0	0	0	0	0	0	0
09.01-WAT LED Lighting Upgrades	\$96	1	\$100	\$196	98%	1,002	0	0	0	96	0	0	0	0
13.01-WDS Air Sealing and Weather Stripping	\$469	2	\$0	\$469	97%	0	447	0	0	0	0	469	0	0
Water Department Shop Total	\$565	3	\$100	\$665	98%	1,002	447	0	0	96	0	469	0	0
Grand Total	\$81,894	495	\$19,731	\$101,625	98%	484,365	29,115	570	571	46,644	0	30,527	2,060	2,665

Does not include any future utility or O&M cost escalations. Excludes construction period savings

## EPC SCHEDULE D

### MEASUREMENT AND VERIFICATION SERVICES PLAN

#### ***M&V Services***

“M&V Services” means Services or activities relating to the measurement and verification by the ESCO of the efficiency and effectiveness of the Project, pursuant to this EPC Contract and the CEO Measurement and Verification Policy as applied.

This schedule shall use the following documents as a standard for presentation and reporting purposes.

EPC M&V Policy: Should the Political Subdivision wish to extend M&V services beyond the Guarantee Period per the M&V Term definition, the future additional annual costs to the Political Subdivision are presented in the table below. If the extended M&V costs beyond the Guarantee Period are not included in the Maximum Contract Price, they will be funded separately by the Political Subdivision

Year	Annual Savings				M&V Cost
	Total Utility Savings	O&M	IRA ITC, Generator Grant & EV Charger Grant	Total Savings	
0	\$36,293	\$11,839		\$48,132	\$0
1	\$82,113	\$19,731	\$322,003	\$423,847	(\$8,247)
2	\$87,322	\$20,323	\$0	\$107,645	(\$6,655)
3	\$93,277	\$20,933	\$0	\$114,209	(\$6,855)

## IPMVP M&V OPTIONS

The International Performance Measurement and Verification Protocol (IPMVP) is a guidance document that provides a conceptual framework for measuring, computing, and reporting savings achieved by energy or water efficiency projects at facilities. It defines key terms and outlines issues that must be considered in developing an M&V plan. Developed through a collaborative effort involving industry, government, financial, and other organizations, the IPMVP serves as the framework for M&V procedures. It provides four M&V options: Options A, B, C, and D. These categories are divided into two general types: retrofit isolation and whole facility. Retrofit isolation methods consider only the affected equipment or system independent of the rest of the facility. Whole facility methods consider the total energy use and de-emphasize specific equipment performance.

Table 1

M&V Option	Description	Considerations
Option A	Retrofit Isolation with <b>KEY</b> Parameter Measurement	<ul style="list-style-type: none"><li>• Focus on performance of individual energy saving measure</li><li>• Short term measurements on one or two <b>KEY</b> parameters</li><li>• Intent is validation of savings calculations</li></ul>
Option B	Retrofit Isolation with <b>ALL</b> Parameter Measurement OR Sub-metering of energy use	<ul style="list-style-type: none"><li>• Focus on performance of individual energy saving measure</li><li>• Measure <b>ALL</b> key parameters to calculate annual energy use OR</li><li>• Directly sub-meter and measure energy use of an individual system</li></ul>
Option C	Whole Facility / Utility Meter Comparison	<ul style="list-style-type: none"><li>• Focus on metered utility use associated with the whole facility</li><li>• Extensive tracking of <b>ALL</b> factors impacting facility energy use pre and post retrofit</li><li>• Calculations to adjust baseline or performance period energy use according to load, operational, or equipment changes</li><li>• Not appropriate for small utility savings (&lt;10%)</li></ul>
Option D	Whole Facility Calibrated Simulation	<ul style="list-style-type: none"><li>• Focus on metered utility uses of the whole facility</li><li>• Savings based on a detailed, calibrated, whole building energy model</li><li>• savings highly dependent on energy model, inputs, calibration</li><li>• Mostly appropriate for new buildings or major retrofits</li></ul>

Reference:

*M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 4.0*  
*Prepared for the U.S. Department of Energy Federal Energy Management Program*

## STIPULATION

Stipulation is a non-IPMVP method by which the M&V effort is limited to one-time verification that the measure is installed and operating; after that time, there is no additional measurement or data collection. This method is recommended for measures having low savings and/or a high certainty of savings that are mostly contingent on City's use or operation and do not merit the additional cost of annual M&V.

## OPTION A

Option A is a retrofit isolation approach designed to evaluate the performance of a single FIM or system and calculate savings from short-term data collection and measurement, engineering calculations, and stipulated factors. Option A methods are appropriate for less complex FIMs for which performance and operational characteristics are well understood and are unlikely to change.

This approach minimizes the cost and effort of performing M&V by measuring only the key performance indicators (KPIs) and estimating all others, and as such is best suited to applications which have high certainty of savings associated with the KPIs.

KPIs are the independent variables such as performance factors (e.g. end-use capacity, demand, power) or operational factors (lighting operational hours, cooling ton-hours) that “drive” savings within a measure. KPIs are selected based on their impact on savings potential and the effort required to measure them.

Measurements for KPIs include spot or short-term measurements during the baseline and post-installation periods. Thereafter, inspections and short-term measurements are conducted to verify that the ‘potential to perform’ exists. As long as the ‘potential to perform’ is verified, the savings are as originally claimed and should not vary over the contract term.

Any factor not measured is stipulated based upon engineering estimates, operating schedules, operator logs, typical weather data, or other documented information sources.

## TIERS FOR OPTION A

McKinstry will take a two-tiered approach to M&V Option A execution. Tier I will be used for those FIMs for which a utility bill calibrated full building energy simulation was developed. Tier II will be used for savings derived by modelling individual systems. The level of effort for each tier is informed by balancing the confidence in the persistence of savings and the cost effectiveness of M&V activities.

Table 2

	TIER I	TIER II
Definition	Long Term Measurement	Short Term Measurement
Intent	Verify that changes to KPIs persist to demonstrate that proposed savings are achieved. In the event that KPIs deviate from those prescribed, the energy model can be updated with performance period operation to reflect actual performance period savings.	Evaluate performance by measuring KPIs pre and post retrofit. Update models with verified values to reflect actual performance period savings.
Post-Install Activities	Measure KPIs pre and post retrofit using BMS data or Functional Performance Testing (FPT). Update savings according to as-built/commissioned conditions.	Measure KPIs pre and post retrofit using as-built documentation for KPIs of all installed systems. Update savings according to as-built/commissioned conditions.
Post-Acceptance Activities	Analyze KPI performance via trend data analysis, BMS data review, or physical measurements to ensure that savings persist; update models as necessary.	Staff will be interviewed to verify operation, such that savings persist.
Frequency and Duration	One-time pre/post measurements during the Post-Install period. For subsequent years, BMS data or physical measurements will be collected to analyze KPI performance over a representative period.	One-time pre/post measurements during the Post-Install Process. One-time, on-site inspection during Performance Year One only. For subsequent years, Staff will be interviewed to confirm functionality.
Sampling Plan	KPIs will be observed at a directed sample of units, selected to represent a substantive proportion of the total FIM savings. A sample to include the largest units at the facilities with the greater apportionment of FIM savings will be selected to demonstrate that FIM savings are achieved. Additional samples will be collected should an unsatisfactory variation be found in the original sample.	KPIs will be measured on a sample of the most common population types. For less common population types, KPIs measurements will be based on a table of manufacturers’ data. The measured population types will represent more than 75% of FIM savings. For each population, the number of samples measured will be sufficient to achieve 20% precision at an 80% confidence; the assumed coefficient of variation (Cv) is 0.5. Additional samples will be collected if the Cv of the original sample exceeds 0.5.

## Customized Measurement & Verification Plan

The options recommended for each FIM are as follows. For details of FIM scope, savings calculations, and baselines, refer to Appendix A of the IGA.

FIM	Facility	RECOMMENDED OPTION	Key KPI	Baseline Values	Proposed Values
01.02 Replace Radiant Infrared Heaters	Jorgensen Park- Outdoor Covered Ice Rink	Stipulated	Heater efficiency	80%	85%
01.03 Replace Standing Pilot heaters	City shop	Stipulated	Heater type	Standing pilot light	Direct spark ignition
		Stipulated	Efficiency	75%	80%
01.05 Expand Snow Melt System	Jorgensen Park- Outdoor Covered Ice Rink	Stipulated	Snow melt system	no snow melt	snow melt installed
01.06 Add HVAC System w- Zone Controls and Duct Mods	City Shop	Stipulated	Coefficient of Performance of gas fired unit heaters	0.70	0.80
		Stipulated	SEER of air-cooled condensing unit	0 *	13
		Stipulated	Night setback	75F, no night setback	72F when heating 77F when cooling
03.02 Replace Make Up Air Unit	City Shop, Jorgensen Park- Event Center/ Indoor Ice Rink	Option A	Damper operation	continuous	Damper opens based on CO levels during occupied hours



FIM	Facility	RECOMMENDED OPTION	Key KPI	Baseline Values	Proposed Values
04.01 Building Automation System	Gunnison Community Center	Option A	schedules	Gym: S-S: 24/7  Office Space: S-S: 24/7	Gym: Sat: 11AM-6PM M-F: 7AM-8PM 9AM-8PM  Office Space: S-S: 7AM-7PM
04.05 Night Setback for ICE Machine	Jorgensen Park- Event Center/ Indoor Ice Rink	Stipulated	Ice machine run time	Ice machine runs continuously	Ice machine runs according to switch position
06.01 Address Ice Melt Humidity Issue in Zamboni Building	Jorgensen Park- Zamboni Building	Stipulated	System installation	No humidity control system	Humidity control system installed
09.01 LED Lighting Upgrades	All in Scope	Option A	Burn hours	Please see IGA for details	Please see IGA for details
		Stipulated	wattage	Please see IGA for details	Please see IGA for details
		Stipulated	fixture type quantity	Please see IGA for details	Please see IGA for details
09.02 JCO Lighting Upgrades	All in Scope	Stipulated	Burn hours	Please see IGA for details	Please see IGA for details
		Stipulated	wattage	Please see IGA for details	Please see IGA for details
		Stipulated	fixture type quantity	Please see IGA for details	Please see IGA for details

FIM	Facility	RECOMMENDED OPTION	Key KPI	Baseline Values	Proposed Values
10.01 Solar PV	Gunnison Community Center Jorgensen Park- Event Center/ Indoor Ice Rink Police Department and Dispatch Gunnison Wastewater Treatment Plant	Option A	Array power output	0 kW AC	24.8 kW AC
		Stipulated	Array size	0 kW DC	24.8kWDC
13.01 Air Sealing and Weather Stripping	All in Scope	Option A	Sealed Area	Please see IGA for IGA for details	Please see IGA for IGA for details
17.01 Pool Water Treatment	Gunnison Community Center	Stipulated	System installation	no system	installed system
21.01 EV Charging Station	Gunnison Community Center	Stipulated	System installation	No charging station	Charging Station Installed

\*No units were previously installed at the City Shop Expansion

## MEASURES RECOMMENDED FOR OPTION A

The following measure(s) can be defined by a select few KPIs measurable at the retrofit level; and once savings calculations are updated with the KPI measurements, these FIMs have a high certainty of savings and persistence.

### FIM 03.02 Replace Make Up Air Units

The Option A Tier II approach is recommended for this FIM. The KPIs that will be measured are:

- Operation of MAU Damper

Typical KPIs that will be stipulated are:

- Operation times

This measure will be implemented in the following buildings: City Shop and the Jorgensen Park Event Center/Indoor Ice Rink. A model was made to determine energy savings associated with replacing the MAUs (more information can be found in the **Appendix H in the IGA**). Units are programmed to override the outside air damper to its maximum position when CO levels in the space rise above the CO setpoint. CO levels will be monitored through sensors installed at the room level while hours of operation will be determined through staff interviews and confirmed through building automation systems. As part of Option A tier II, the building automation system will be used periodically during the throughout the first year of performance and /or staff will be interviewed. For subsequent years, staff will be interviewed to verify performance.

### FIM 04.01 Building Automation System

The Option A Tier II approach is recommended for this FIM. The KPIs that will be measured are:

- Schedules

Typical KPIs that will be stipulated are:

- Building load
- Space temperatures

This measure will be implemented in the following buildings: Gunnison Community Center. A model was made to determine energy savings associated with the optimization of schedules allowed by the newly installed building automation system. (More information can be found in the **Appendix H in the IGA**). Through the commissioning process, the schedules for areas throughout the Community Center will be implemented which will be used to update the model. As part of Option A tier II, the Building Automation System will be used periodically during the throughout the first year of performance. For subsequent years, staff will be interviewed to verify performance.

### FIM 09.01 LED Lighting Upgrade

The Option A Tier II approach is recommended for this FIM. The KPIs that will be measured are:

- Burn hours

Typical KPIs that will be stipulated are:

- Fixture, lamp, and ballast quantity
- Fixture, lamp, and ballast type and wattage

During the audit, lighting loggers were deployed throughout the selected facilities for several weeks to help determine the hours of operation of each space used year-round. Interviews with staff were also conducted to confirm these schedules. Quantities of existing fixtures, lamps, and ballasts were also counted over several site walks and recorded in the lighting line-by-line spreadsheet used to calculate savings. This process is repeated during the construction period to measure the counts of installed fixtures, lamps, and ballasts. Burn hours will be measured pre- and post-retrofit. Refer to the lighting line-by-line for the full list of fixture types and wattage. The line-by-line is updated according to post-retrofit conditions then the installed scope and savings are compared to the proposal. Any major variations are explained in the M&V post-install report and accounted for in the verified savings calculation. Once the final line-by-line is accepted, no further measurements are performed. Following the Option A Tier II approach, an inspection is conducted in the first performance year on a sample of fixtures and the results are reported. For subsequent performance years, staff are interviewed to verify FIM performance.

## FIM 10.01 SOLAR PV INSTALLATION

The Option A Tier II approach is recommended for this FIM. The KPIs that will be measured are:

- Solar production capacity
- Array size

Typical KPIs that will be stipulated are:

- Mounting parameters: Azimuth, tilt, tacking
- Weather factors (see Risk, Responsibility and Performance Matrix Section 2 for more information)

In accordance with Option A Tier II, a one-time measurement will be taken of the AC power output to demonstrate that the panels meet or exceed their published values. *Refer to **Appendix H in the IGA** for more details.*

## FIM 13.01 AIR SEALING AND WEATHER-STRIPPING

The Option A Tier II approach is recommended for this FIM. The KPIs are:

- Sealed area

The KPIs that will be stipulated are:

- Zone / space temperature

This measure will be implemented throughout selected facilities. The area that will be sealed is measured pre and post retrofit. Refer the **Appendix H in the IGA** for more details. A model was created to determine energy savings which will be updated with final, as-built conditions and measurements in the post construction phase. The zone or space temperature of these areas is stipulated. As part of Option A tier II, measurements will be taken post construction and a site visit in year 1 will be conducted. For subsequent years, staff will be interviewed to verify performance.

## MEASURES RECOMMENDED FOR STIPULATION

The following measure(s) can be defined as stipulated measures due to their low savings and/or a high certainty of savings and do not merit the additional cost of annual M&V. The M&V effort is limited to one-time verification that the measure is installed and operating; after that time, there is no additional measurement or data collection.

### FIM 01.02 Replace Radiant Infrared Heaters

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Heater efficiency

This measure will be implemented at the Indoor Ice Arena at Jorgensen Park. A model was made to determine energy savings associated with the replacement of older, less efficient infrared heaters with new, more efficient heaters. Refer the **Appendix H in the IGA** for more details. *In accordance with the stipulated approach, M&V activities will verify that the efficiency via onsite verification during the construction process and submittal review.*

### FIM 01.03 Replace Standing Pilot Heaters

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Heater type
- Heater efficiency

This measure will be implemented at the City Shop. A model was made to determine energy savings associated with replacing the standing pilot light heaters with direct spar ignition heaters. Refer to **Appendix H in the IGA** for more details. In accordance with the stipulated approach, M&V activities will verify that the efficiency via onsite verification during the construction process and submittal review.

### FIM 01.05 Expand Snow Melt System

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Snow melt system installation

This measure will be implemented at the Outdoor Ice Rink at Jorgensen Park. A model was made to determine energy savings associated with expanding the snow melt system. Refer to **Appendix H in the IGA** for more details. In accordance with the stipulated approach, M&V measures will verify that this system was installed via onsite verification during the construction process, submittal review, and/ or staff interviews.

### FIM 01.06 Add HVAC System w/Zone controls and Duct Mods

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Coefficients of Performance of gas-fired unit heaters
- SEER of air-cooled condensing unit
- Night setback

This measure will be implemented at the City Shop. Energy savings were modeled using the increased efficiency of the gas-fired unit heaters. Baseline adjustments were made in order to determine the energy savings of installing new air-cooled units in the space where cooling does not exist. Additionally, night setbacks will be programmed to increase energy savings. Refer to **Appendix H in the IGA** for more details. In accordance with the stipulated approach, M&V activities will verify that the efficiency via onsite verification during the construction process and submittal review.

### FIM 04.05 Night Setback for Ice Machine

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Night setback switch installation

This measure will be implemented at the Indoor Ice Arena at Jorgensen Park. A model was made to determine energy savings associated with *reducing the energy use of the ice machine during nights*. For more information, please see **Appendix H in the IGA** for more details. In accordance with the stipulated approach, M&V measures will verify that this system was installed via onsite verification during the construction process, submittal review, and/or staff interviews.

### FIM 06.01 Address Ice Melt Humidity Issues from Zamboni

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Exhaust fan, heater and controls installation

This measure will be implemented at the Zamboni Building at Jorgensen Park. A model was created to determine the energy penalty associated with this measure. For more information, please see **Appendix H in the IGA** for more details. In accordance with the stipulated approach, M&V measures will verify that this system was installed via onsite verification during the construction process, submittal review, and/or staff interviews.

### FIM 09.02 Ballpark Lighting

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Fixture, lamp, and ballast quantity, type, and wattage
- Burn hours

During the audit, the quantities of existing fixtures, lamps, and ballasts are counted over several site walks. The quantities are recorded in the lighting line-by-line spreadsheet used to calculate savings. This process is repeated during the construction period to measure the counts of installed fixtures, lamps, and ballasts. Refer to the lighting line-by-line for the full list of fixture types and wattage. The line-by-line is updated according to post-retrofit conditions then the installed scope and savings are compared to the proposal. Any major variations are explained in the M&V post-install report and accounted for in the verified savings calculation. Once the final line-by-line is accepted, no further measurements are performed.

### FIM 17.01 Pool Water Treatment

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- Water treatment system installation

This measure will be implemented at the Community Center. For savings calculations. Refer to **Appendix H in the IGA** for more details. As savings associated with this measure are primarily due to the operations and maintenance of the installed water treatment system, M&V activities will include verification of installed equipment and verification via onsite visual inspection during the construction period, submittal review, and/or staff interviews.

### FIM 21.01 EV Charging Station - Level 2

The Stipulated approach is recommended for this FIM. The KPIs that will be reviewed are:

- EV charging station installation

This measure will be implemented at the Community Center. For savings calculations. Refer to **Appendix H in the IGA** for more details. M&V activities will include verification of installed equipment and verification via onsite visual inspection during the construction period, submittal review, and/or staff interviews.

## SAVINGS CALCULATIONS

All guaranteed savings calculations and assumptions for this project were reviewed and agreed to by City staff and/or a third-party expert reviewer during the development of the project. At that time, McKinstry had provided all calculations and supporting information including all trend data used to develop the basis of these calculations.

## SAMPLING PLAN

When retrofits are performed on a large number of fixtures such as lighting luminaires, it is impractical to measure performance of each installation. Instead, performing measurements on a statistically significant sample of fixtures provides high levels of savings certainty without the cost and disruption of individual measurement of every fixture installed. The following tables show the fixture population types and sample sizes calculated to 80% confidence and 20% precision per FEMP M&V Option A sampling guidelines.

### FIM 09.01 LIGHTING SAMPLING PLAN

For hours of operation measurements, an audit was done of the spaces included in the project. These spaces were then quantified, and loggers were placed in accordance with the 80/20 statistical sample listed table below. post measurements will be taken to confirm hours of operation.

#### PRE& POST CONSTRUCTION MEASUREMENTS:

POPULATION SPACE TYPE	POPULATION SIZE	SAMPLE SIZE
Garage Vehicle Maint	6	6
Open Office	19	19
Private-office	28	28
Gym	5	5
Restroom	25	25
Cafeteria	10	10
Mechanical/Electrical	36	36
Hallway	15	15

## O&M REPORTING RESPONSIBILITIES

Refer to Material Changes section of the Contract for O&M reporting responsibilities.

## CALIBRATION SUPPLEMENT

The analysis of some KPIs will require data collected using the existing BAS. The calibration maintenance of measuring and metering devices that are elements of these systems are the responsibility of the City. McKinstry will provide details of equipment make, model, and calibration for all other devices used as an element of the M&V process.

## SCHEDULE OF VERIFICATION REPORTING ACTIVITIES

ITEM	SUBMISSION TIMELINE	CITY REVIEW AND ACCEPTANCE PERIOD
Post-Installation Report	60 to 90 days after Completion	30 days
Annual Report	60 to 90 days after conclusion of performance period	30 days

## REFERENCES

ITEM	LOCATION
FIM Scope and Description	Schedule B - IGA Report Appendix A – Lighting Audit Schedule B - IGA Report Appendix I – Statements of Work
FIM Proposed Annual Savings	Schedule B - IGA Report – Section 4 – Table 10
Lighting Audit Tables	Schedule B - IGA Report Appendix A – Lighting Audit
Maintenance & Warranty Information	Schedule B - Section 4.5 FIM Description

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## **M&V REPORT CONTENT & FORMAT**

The published M&V report shall have the following sections:

- (I) EXECUTIVE SUMMARY**
  - 1) Project summary
  - 2) Summary of guaranteed and verified utility cost savings
  - 3) Comparison of guaranteed and verified savings by FIM and utility type
  - 4) Summary of observations, issues, and recommendations
  - 5) Brief FIM descriptions
  - 6) M&V approach
- (II) DETAILED M&V SECTIONS – BY INDIVIDUAL FIM**
  - 1) Brief FIM descriptions
  - 2) M&V activities overview
    - A) M&V plan overview
    - B) Summary of sampling plan
    - C) Table of KPI measurements
  - 3) Observations, issues, and recommendations
  - 4) Verified savings calculation and methodology
    - A) Calculation and methodology summary
    - B) Guarantee factor details
  - 5) Summary of guaranteed and verified savings for performance year
- (III) APPENDICES**
  - 1) Supporting Documentation
    - A) Testing data, trend charts, and analysis
    - B) BAS screen captures
    - C) Site visit photos
  - 2) Utility Rates

Risk, Responsibility and Performance Matrix

RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
1. Financial	
<b>a. Interest rates:</b> Neither the contractor nor the City has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the contract execution may impact the available interest rate and project cost.	Use a slightly conservative estimate of interest rate for planning purposes. When financing details have been determined and the rate locked in, McKinstry will update the cashflow and present the impact to the project.
<b>b. Construction costs:</b> The contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the City assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the contractor or the City may find that the project or measure is no longer viable and drop it before contract execution. In any design/build contract, the City loses some design control. <b>Clarify design standards and the design approval process (including changes) and how costs will be reviewed.</b>	McKinstry has coordinated equipment and material selection, completed preliminary designs, and obtained subcontractor bids prior to finalizing costs. Final equipment submittals will be provided to the City for approval prior to placing orders.  Direct subcontractor and material costs will be reconciled and reviewed with the City prior to project acceptance. Unused budgets for subcontractor costs or for direct material costs will revert back to contingency.
<b>c. M&amp;V confidence:</b> The City assumes the responsibility to determine the confidence that it desires to have in the M&V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&V program, and the MCKINSTRY must consider the requirement prior to submittal of the final proposal. <b>Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&amp;V costs.</b>	McKinstry’s approach to the application of M&V will be to verify the performance of the installed FIMs. The M&V Plan details the steps taken in the verification process. The approach to M&V for each FIM is matched with the level of savings and the implementation complexity of the FIM. As applicable, equipment performance is measured and operational factors are tracked through onsite measurements, personnel interviews, and BAS and/or meter data.
<b>d. Energy Related Cost Savings:</b> The City and the contractor may agree that the project will include savings from <i>recurring</i> and/or <i>one-time</i> costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the City. Recurring savings generally result from reduced O&M expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions. <b>Clarify sources of non-energy cost savings and how they will be verified.</b>	No one-time cost avoidances are included in the project financials.  <u>Lighting O&amp;M Savings</u> Non-energy cost savings include regular O&M expenses for lighting. The O&M savings are based on the reduction in the amount of materials the City would need to purchase to operate the lighting. The annual average cost to maintain the existing and post-retrofit systems was calculated using the rated life of components and the current cost of replacement parts. The calculated savings is the difference between the existing annual average cost of materials and the post-retrofit scenario.
<b>e. Delays:</b> Both the contractor and the City can cause delays. Failure to implement a viable project in a timely manner costs the City in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). <b>Clarify schedule and how delays will be handled.</b>	McKinstry has mitigated this risk by providing ample schedule contingency within the construction schedule. In addition, construction-period savings will be a reality as FIMs are implemented and will provide a buffer for any potential schedule extensions.
<b>f. Major changes in facility:</b> The City controls major changes in facility use, including closure. <b>Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</b>	In the case of facility closure, loss of funding, or other major changes, McKinstry and the City will have open discussions of FIM reduction, modification, or removal.  In the event of major changes in facility use, the energy savings will be calculated based on the baseline and proposed conditions as contained in M&V Plan.

2. Operational								
<p><b>a. Operating hours:</b> The City generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in “savings” depending on the M&amp;V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). <b>Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.</b> If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	<p>Detailed operating hour baselines have been developed for lighting usage; the values were presented to the City to identify the acceptable values to be used in the savings calculations. Savings will be verified at the originally proposed hours regardless of future changes. If operating hours do change, McKinstry may recalculate savings at its discretion to demonstrate the impact of the change.</p> <p>The application of the operating hours varies by type of measures proposed, magnitude of savings, and potential for impact on the overall savings. Operating hours are applied as follows:</p> <table><tr><th>Measure Category</th><th>Baseline</th><th>Post-Install</th></tr><tr><td>Lighting Burn Hours (FIM 09.01)</td><td>Sample size measurements taken</td><td>Stipulated based on pre burn hour measurements</td></tr></table>		Measure Category	Baseline	Post-Install	Lighting Burn Hours (FIM 09.01)	Sample size measurements taken	Stipulated based on pre burn hour measurements
Measure Category	Baseline	Post-Install						
Lighting Burn Hours (FIM 09.01)	Sample size measurements taken	Stipulated based on pre burn hour measurements						
<p><b>b. Load:</b> Equipment loads can change over time. The City generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in “savings” depending on the M&amp;V method. <b>Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.</b> If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	<p>All savings calculations assume that the equipment loads are constant for the duration of the project's performance period. The City assumes all risk and responsibility to manage the equipment loads at or below the baseline conditions documented in individual savings calculations. If actual equipment loads, as defined in the M&amp;V plan, are higher than baseline values, all savings will be capped at the baseline load conditions. If equipment load is lower than baseline, all savings will be capped at baseline load conditions, as the facility now has the potential to increase the loads to the baseline values without impact on the actual savings. If equipment loads do change, McKinstry may recalculate savings at its discretion to demonstrate the impact of the change.</p>							
<p><b>c. Weather:</b> A number of energy efficiency measures are affected by weather. Neither the contractor nor the City has control over the weather. Should the City agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. <b>Clearly specify how weather corrections will be performed.</b></p>	<p>Savings calculations for FIM 13.01 Air Sealing and Weather Stripping are based on Typical Meteorological Year (TMY) weather files for the weather station closest to the site or the local airport. All post-install calculations will continue to use the TMY weather files as applicable.</p> <p>Interactive heating effects for FIM 09.01 and 09.02 are based on published ASHRAE “Fraction of Annual Lighting Heat to Cooling and Heating” values.</p> <p><b>Solar M&amp;V and Weather Normalization</b></p> <p>The production of solar arrays is highly dependent upon the available solar irradiance and other weather factors of which neither McKinstry nor the Customer has control. Savings calculations for FIM 10.01 are based on Typical Meteorological Year (TMY) weather files that are the best statistical fit for a specific project site. The guaranteed solar production in kWh and the associated dollar savings represent the estimated performance from a TMY based energy production model with a guarantee factor and degradation factor applied. The verified savings for a performance period is based on the capability of the system to produce as intended. Neither McKinstry nor the Customer shall be penalized or credited for weather conditions that deviate from the estimated TMY conditions that result in excess or insufficient availability of solar irradiance, weather parameters, or other non-weather-related issues. If damage from extreme weather events occurs during any performance period, McKinstry will not be responsible for the loss of energy production. If outages in solar monitoring system data occur throughout the guaranteed term, such periods will be excluded from the analysis.</p> <p>Long term monitoring of the solar production is excluded in the measurement and verification of FIM 10.0, therefore McKinstry is not responsible for reporting on outages or production loss in solar monitoring system data that occur throughout the guaranteed term.</p>							

<p><b>d. User participation:</b> Many facility improvement measures require user participation to generate savings (e.g., control settings). The savings can be variable, and the contractor may be unwilling to invest in these measures. <b>Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk.</b> If performance is stipulated, document and review assumptions carefully and consider M&amp;V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).</p>	<p>City maintenance of Solar PV systems is required after the initial period of O&amp;M services provided by McKinstry. For all Solar PV FIMs proposed, annual routine maintenance requirements will be identified and documented along with preventative maintenance activities in order to maintain warranties and optimal system performance. Long term monitoring is not included in the measurement and verification plan. As such, if vandalism or other unforeseeable accidents occur during any performance period, McKinstry will not be responsible for the loss of energy production.</p> <p>Maintenance of proper time schedules, setpoints, and programming sequences of controls is required. For FIMs proposed, routine maintenance requirements for any new systems will be identified and documented.</p> <p>It is the City’s responsibility for all maintenance for both new and existing systems for all FIMs.</p> <p>To ensure the City understands the risk, McKinstry will provide training, videotaping, and operating guides. McKinstry may review operating logs on a periodic basis during the performance period. City maintenance of trends, trend export, and access to automation systems is required for execution of the M&amp;V Plan</p>
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3. Performance	
<p><b>a. Equipment performance:</b> The contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. <b>Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.</b></p>	<p>McKinstry will select major equipment that will have life expectancy that meets or exceeds the contract term, is based on the requirements of the City, facility needs, and provides enhancement of the operation and savings of the FIMs. McKinstry will perform periodic checks to ensure that performance does not degrade impacting savings, and verify routine preventive maintenance (PM) is performed by the City in accordance with industry and OEM specifications and per subsection C below. If, in a case of equipment non-performance, McKinstry may contact the OEM for required repairs to return equipment to OEM performance standards or replace to remedy performance deficiencies. McKinstry will secure long-term warranties from equipment manufacturers if warranted, and will also ensure these warranties are transferrable to the City at project acceptance. If a manufacturer becomes insolvent at any point and the equipment performance is negatively impacted, McKinstry is not responsible for the loss of energy production.</p>
<p><b>b. Operations:</b> Performance of the day-to-day operations activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.</b></p>	<p>It is the City’s responsibility to maintain operation of all FIMs including new and existing systems. The City will also be responsible for providing or procuring Solar PV O&amp;M services after the initial period to keep the systems operating as expected. McKinstry will provide operation guidelines, preventative maintenance guidelines, and initial training to ensure that the systems are operated and maintained per OEM required guidelines that will ensure savings are retained.</p>
<p><b>c. Preventive Maintenance:</b> Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify how long-term preventive maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.</b></p>	<p>McKinstry will provide all necessary training on the maintenance requirements of the equipment for operation by the City. Should the maintenance requirements be inadequate, McKinstry will notify the City immediately and will work with the City to determine the best approach to ensure proper maintenance practices are adhered to in accordance with prescribed practices by McKinstry and/or OEM specifications. The City shall be responsible for all annual and preventative maintenance activities on the solar systems after the period of O&amp;M services provided by McKinstry.</p>
<p><b>d. Equipment Repair and Replacement:</b> Performance of day-to-day repair and replacement of contractor-installed equipment is negotiable; however, it is often tied to project performance. The contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract.</b> Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.</p>	<p>1) McKinstry owns all warranty costs during the warranty period. All warranty activities beyond the warranty period will be transferred to the City and will be administered by the City.</p> <p>2) All equipment replacement costs due to equipment reaching the end of its useful life are the City’s responsibility. Equipment life expectancies will be identified after design and equipment selections have been completed. Upon project acceptance, McKinstry will provide a detailed FIM list with warranty duration including start and end dates and determined warranty coverage with any exclusions or conditions that would void the warranty. This information will be contained in the final O&amp;M manuals.</p>

## EPC SCHEDULE E

### CODE COMPLIANCE REQUIREMENTS

**Code Compliance Requirement:** It is the intent of this schedule to initially determine the requirements for code review, construction permits, and the cost for said items with the building official and the code authority. An EPC project might include replacement of existing systems; it is not within the ESCO's or Principal Representative's authority to waive any code compliance or local permit requirements. The code official should be contacted after the list of recommended measures is developed to confirm the requirements and the potential cost of code work. While the code review agents are expected to conduct their work with due diligence, this in no way relieves the ESCO and any contractors from their obligations to design and construct the project in conformance with the adopted codes nor is it intended to transfer any duties, obligations, or liabilities of the design and construction teams to the code review agents.

ECM Name	Facility	Code Required (Y/N - Type)	Documentation Review Cost	Field Inspection/ Permit Cost	Total ECM Cost *
09.01-CHAR LED Lighting Upgrades	Cha Mar Park	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 1,591
<b>Char Mar Park- Restroom Building Total</b>					<b>\$ 1,591</b>
01.03-CIS Replace Standing Pilot Heaters	City Shop	Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 10,919
01.06-CIS Add HVAC System w-Zone Controls and Duct Mods		Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 95,610
09.01-CIS LED Lighting Upgrades		Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 10,170
10.01-CIS Solar PV		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 119,615
13.01-CIS Air Sealing and Weather Stripping		N	N/A	N/A	\$ 6,803
<b>City Shop Total</b>					<b>\$ 243,117</b>
09.01-ELS LED Lighting Upgrades	Electric Shop	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 2,560
13.01-ELS Air Sealing and Weather Stripping		N	N/A	N/A	\$ 17,151
<b>Electric Shop Total</b>					<b>\$ 19,711</b>
13.01-BLU Air Sealing and Weather Stripping	Blue Barn	N	N/A	N/A	\$ 11,491
<b>Garage and Fleet Storage (Blue Barn) Total</b>					<b>\$ 11,491</b>
05.01-CIH Retro-Commissioning and TAB	City Hall	N	N/A	N/A	\$ 33,950
09.01-CIH LED Lighting Upgrades		Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 33,985
13.01-CIH Air Sealing and Weather Stripping		N	N/A	N/A	\$ 3,144
<b>Gunnison City Hall Total</b>					<b>\$ 71,079</b>
04.01-GCC Building Automation System	Gunnison Community Center	Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 399,772
09.01-GCC LED Lighting Upgrades		Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 146,235
10.01-GCC Solar PV		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 239,228
10.03-GCC Assessment of Solar Panels		N	N/A	N/A	\$ 6,000
11.02-GCC New Generators		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 835,629
13.01-GCC Air Sealing and Weather Stripping		N	N/A	N/A	\$ 43,392
17.01-GCC Pool Water Treatment		Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 388,730
21.01-GCC EV Charging Station- Level 2		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 42,476
<b>Gunnison Community Center Total</b>					<b>\$2,101,462</b>
09.01-GSB LED Lighting Upgrades	Storage Building	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 18,135
<b>Gunnison Storage Building Total</b>					<b>\$ 18,135</b>

ECM Name	Facility	Code Required (Y/N - Type)	Documentation Review Cost	Field Inspection/ Permit Cost	Total ECM Cost *
05.02-WWTP Recommissioning	Waste Water Treatment Plant	N	N/A	N/A	\$ 46,215
09.01-WWTP LED Lighting Upgrades		Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 34,053
10.01-WWTP Solar PV		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 124,115
13.01-WWTP Air Sealing and Weather Stripping		N	N/A	N/A	\$ 30,928
<b>Gunnison Waste Water Treatment Plant Total</b>					<b>\$ 235,311</b>
09.01-WELL LED Lighting Upgrades	Wells	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 3,512
<b>Gunnison Well Sites Total</b>					<b>\$ 3,512</b>
09.01-IOOF LED Lighting Upgrades	IOOF Park	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 1,591
<b>IOOF Park- Restroom Building Total</b>					<b>\$ 1,591</b>
09.01-JCO LED Lighting Upgrades	JCO Ballpark	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 1,794
<b>09.02-JCO Ballpark Lighting</b>					<b>\$ 453,132</b>
09.04-JCO Pond LED Lighting Upgrades	Jorgensen Complex	Y-IECC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 33,000
<b>Jorgensen Complex Total</b>					<b>\$ 487,926</b>
01.02-INICE Replace Radiant Infrared Heaters	Indoor Ice Arena	Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 76,043
03.02-INICE Replace Make Up Air Unit		Y-IMC, NEC, NFPA	Included in ECM Cost	Included in ECM Cost	\$ 212,811
04.05-INICE Night Setback for Ice Machine		N	N/A	N/A	\$ -
09.01-INICE LED Lighting Upgrades		Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 18,952
10.01-INICE Solar PV		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 119,615
13.01-INICE Air Sealing and Weather Stripping		N	N/A	N/A	\$ 16,751
<b>Jorgensen Park- Event Center/ Indoor Ice Rink Total</b>					<b>\$ 444,172</b>
13.01-LOC Air Sealing and Weather Stripping	Locker Room	N	N/A	N/A	\$ 3,144
<b>Jorgensen Park- Locker Room Building Total</b>					<b>\$ 3,144</b>
01.05-OUICE Expand Snow Melt System	Outdoor Ice Rink	Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 109,175
06.01-OUICE Address Ice Melt Humidity Issues from Zamboni		Y-IMC, NEC	Included in ECM Cost	Included in ECM Cost	\$ 38,470
<b>Jorgensen Park- Outdoor Covered Ice Rink Total</b>					<b>\$ 147,645</b>
09.01-PARK LED Lighting Upgrades	Jorgense Parks Building	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 10,229
13.01-PARK Air Sealing and Weather Stripping		N	N/A	N/A	\$ 8,232
<b>Jorgensen Park- Parks Building Total</b>					<b>\$ 18,461</b>

ECM Name	Facility	Code Required (Y/N - Type)	Documentation Review Cost	Field Inspection/ Permit Cost	Total ECM Cost *
09.01-LEG LED Lighting Upgrades	Legion Park	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 10,210
<b>Legion Park- Restroom Building Total</b>					<b>\$ 10,210</b>
09.01-MEA LED Lighting Upgrades	Meadows Park	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 1,591
<b>Meadows Park- Restroom Building Total</b>					<b>\$ 1,591</b>
09.01-PDD LED Lighting Upgrades	Police Department	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 23,252
10.01-PDD Solar PV		Y-NEC	Included in ECM Cost	Included in ECM Cost	\$ 119,615
13.01-PDD Air Sealing and Weather Stripping		N	N/A	N/A	\$ 6,974
<b>Police Department and Dispatch Total</b>					<b>\$ 149,841</b>
09.01-TOM LED Lighting Upgrades	Tomichi Park	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 1,591
<b>Tomichi Riverway Park- Restroom Building Total</b>					<b>\$ 1,591</b>
09.01-VTR LED Lighting Upgrades	Van Tuyt Ranch House	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 1,935
<b>Van Tuyt Ranch- Rental Residence Total</b>					<b>\$ 1,935</b>
09.01-WAT LED Lighting Upgrades	Water Department Shop	Y-IECC	Included in ECM Cost	Included in ECM Cost	\$ 2,408
13.01-WDS Air Sealing and Weather Stripping		N	N/A	N/A	\$ 21,496
<b>Water Department Shop Total</b>					<b>\$ 23,904</b>

\* Costs include contingency

**Total \$ 3,997,420**

DRAFT



City of Gunnison									
A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION	SCHEDULED VALUE	WORK	COMPLETED	MATERIALS PRESENTLY STORED (Not in D or E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH (C-G)	RETAINAGE 5.00%
			FROM PREVIOUS APPLICATION	THIS PERIOD					
1	Pre-Construction Costs								
2	Bond	\$ 17,749				\$ -	0%	\$ 17,749	\$ -
3	Design and Engineering	\$ 278,081				\$ -	0%	\$ 278,081	\$ -
4	Pre-Construction Services	\$ 100,000				\$ -	0%	\$ 100,000	\$ -
5	Other Pre-Construction Costs	\$ 100,000				\$ -	0%	\$ 100,000	\$ -
6	Construction Costs								
7	Trade Subcontracts								
7a	01.02 Replace Radiant Infrared Heaters Total	\$ 28,164				\$ -	0%	\$ 28,164	\$ -
7b	01.03 Replace Standing Pilot Heaters Total	\$ 7,799				\$ -	0%	\$ 7,799	\$ -
7c	01.05 Expand Snow Melt System Total	\$ 68,275				\$ -	0%	\$ 68,275	\$ -
7d	01.06 Add HVAC System w-Zone Controls and Duct Mods Total	\$ 59,792				\$ -	0%	\$ 59,792	\$ -
7e	03.02 Replace Make Up Air Unit Total	\$ 133,086				\$ -	0%	\$ 133,086	\$ -
7f	04.01 Building Automation System Total	\$ 250,006				\$ -	0%	\$ 250,006	\$ -
7g	04.05 Night Setback for Ice Machine Total	\$ -				\$ -	0%	\$ -	\$ -
7h	05.01 Retro-Commissioning and TAB Total	\$ 33,950				\$ -	0%	\$ 33,950	\$ -
7i	05.02 Recommissioning Total	\$ 46,215				\$ -	0%	\$ 46,215	\$ -
7j	06.01 Address Ice Melt Humidity Issues from Zamboni Total	\$ 21,983				\$ -	0%	\$ 21,983	\$ -
7k	09.01 LED Lighting Upgrades Total	\$ 202,491				\$ -	0%	\$ 202,491	\$ -
7l	09.02 Ballpark Lighting Total	\$ 302,088				\$ -	0%	\$ 302,088	\$ -
7m	09.04 Pond LED Lighting Upgrades Total	\$ 22,000				\$ -	0%	\$ 22,000	\$ -
7n	10.01 Solar PV Total	\$ 481,457				\$ -	0%	\$ 481,457	\$ -
7o	10.03 Assessment of Solar Panels Total	\$ 6,000				\$ -	0%	\$ 6,000	\$ -
7p	11.02 New Generators Total	\$ 417,814				\$ -	0%	\$ 417,814	\$ -
7q	13.01 Air Sealing and Weather Stripping Total	\$ 73,698				\$ -	0%	\$ 73,698	\$ -
7s	17.01 Pool Water Treatment Total	\$ 197,325				\$ -	0%	\$ 197,325	\$ -
7t	21.01 EV Charging Station- Level 2 Total	\$ 26,563				\$ -	0%	\$ 26,563	\$ -
8	Construction Management	\$ 240,000				\$ -	0%	\$ 240,000	\$ -
9	Project Engineering	\$ 65,500				\$ -	0%	\$ 65,500	\$ -
10	General Conditions	\$ 49,200				\$ -	0%	\$ 49,200	\$ -
11	Construction Completion	\$ 135,000				\$ -	0%	\$ 135,000	\$ -
12	Other Construction Costs	\$ 108,251				\$ -	0%	\$ 108,251	\$ -
13	Warranty	\$ 10,000				\$ -	0%	\$ 10,000	\$ -
14									
15	Profit	\$ 348,249				\$ -	0%	\$ 348,249	\$ -
16	Contingency	\$ 125,370				\$ -	0%	\$ 125,370	\$ -
17	TEA Audit	\$ 41,314				\$ -	0%	\$ 41,314	\$ -
18									
19									
20									
Page Total:		\$ 3,997,420	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,997,420	\$ -

## EPC Schedule G: Proposed Financial Cost and Cash Flow Analysis

The tables below are examples of information that should be included in the Projected Financial Cost and Cash Flow Analysis schedule. The presented information could be new on the table or copied/summarized from previous schedules. The ESCO should complete this table, or present equivalent information in any format provided that it presents all the required information.

Table 1 – Project Costing Detail

Project Summary	TEA Contract % Maximum	Actual %	Amount
<i>Technical Energy Audit</i>	-	-	<i>\$41,314</i>
<b>Pre-Construction Costs</b>	-	-	-
Design and Engineering	8.0%	8.0%	\$278,081
Pre-Construction Services	3.0%	2.9%	\$100,000
Other Pre-Construction Costs	3.0%	2.9%	\$100,000
	<i>Pre-Construction Cost Sub-Total</i>		<i>\$478,081</i>
<b>Construction Costs</b>	-	-	-
Trade Subcontracts	-	46.7%	\$1,627,035
Design/Build Subcontracts	-	21.6%	\$751,671
Direct Purchase Equipment	-	0.0%	\$0
Construction Management	7.0%	6.9%	\$240,000
Project Engineering	2.0%	1.9%	\$65,500
General Conditions	1.5%	1.4%	\$49,200
Construction Completion	4.0%	3.9%	\$135,000
Other Construction Costs	4.0%	3.9%	\$136,001
	<i>Construction Cost Subtotal</i>		<i>\$3,004,407</i>
<b>Estimated Project Amount</b>			<b>\$3,482,488</b>
<i>Profit</i>	10.0%	10.0%	<i>\$348,249</i>
<i>Contingency</i>	5.0%	3.6%	<i>\$125,370</i>
<b>Total Funded Amount (Before Incentives)</b>	-	-	<b>\$3,997,420</b>

Project Cash Flow

General Inputs	
EPC Construction Cost	\$ 3,997,420
3rd Party Fee (%)	0.0%
3rd Party Fee (\$)	\$0
Initial Customer Capital & DOLA Grant	\$1,663,696
Incentives	\$2,362
Constr. Period Int. (9 mo.)	\$0
Financed Cost	\$ 2,331,362
Years of Analysis	25
Finance Term (Yrs)	25
Payment Type	Stepped
Interest Rate	4.75%

Annual Savings	
Baseline Utility Spend	\$354,738
Electric	\$46,644
Natural Gas & Propane	\$30,527
Water & Sewer	\$4,725
O&M	\$19,731

Escalation Rates	
Electric	5.50%
Natural Gas & Propane	5.50%
Water & Sewer	5.50%
O&M	3.0%
O&M Last Year	25
Measurement & Verification	3.0%
Maintenance Service	2.0%

Measurement & Verification	
Year 1 M&V Cost	\$8,247
Year 2 M&V Cost	\$6,655
3rd Party Fee (%)	0.0%
M&V End Year	3
Maintenance Service Cost	\$0

Results	
20-YR NPV	\$3,000
25-YR NPV	\$1,082,000

Year	Annual Savings							M&V Cost	Total Annual Savings Less M&V & Maintenance	Cash Flow Analysis				
	Electric	Nat Gas	Water & Sewer *	Total Utility Savings	O&M	IRA ITC, Generator Grant & EV Charger Grant **	Total Savings			Interest	Principal	Total Payment	Loan Balance	Annual Cash Flow
0	\$15,142	\$18,316	\$2,835	\$36,293	\$11,839		\$48,132	\$0	\$48,132	\$0	\$0	\$0	\$2,331,362	\$0
1	\$46,861	\$30,527	\$4,725	\$82,113	\$19,731	\$322,003	\$423,847	(\$8,247)	\$463,732	(\$110,740)	(\$352,991)	(\$463,731)	\$1,978,371	\$1
2	\$49,210	\$32,206	\$5,906	\$87,322	\$20,323	\$0	\$107,645	(\$6,655)	\$100,990	(\$93,973)	(\$7,016)	(\$100,989)	\$1,971,354	\$1
3	\$51,916	\$33,978	\$7,383	\$93,277	\$20,933	\$0	\$114,209	(\$6,855)	\$107,354	(\$93,639)	(\$13,714)	(\$107,353)	\$1,957,640	\$1
4	\$54,772	\$35,846	\$5,496	\$96,114	\$21,561	\$0	\$117,674	\$0	\$117,674	(\$92,988)	(\$24,685)	(\$117,673)	\$1,932,955	\$1
5	\$57,784	\$37,818	\$5,798	\$101,400	\$22,207	\$0	\$123,607	\$0	\$123,607	(\$91,815)	(\$31,791)	(\$123,606)	\$1,901,163	\$1
6	\$60,962	\$39,898	\$6,117	\$106,977	\$22,874	\$0	\$129,851	\$0	\$129,851	(\$90,305)	(\$39,544)	(\$129,850)	\$1,861,619	\$1
7	\$64,315	\$42,092	\$6,453	\$112,861	\$23,560	\$0	\$136,421	\$0	\$136,421	(\$88,427)	(\$47,993)	(\$136,420)	\$1,813,626	\$1
8	\$67,853	\$44,407	\$6,808	\$119,068	\$24,267	\$0	\$143,335	\$0	\$143,335	(\$86,147)	(\$57,186)	(\$143,334)	\$1,756,440	\$1
9	\$71,584	\$46,850	\$7,183	\$125,617	\$24,995	\$0	\$150,611	\$0	\$150,611	(\$83,431)	(\$67,180)	(\$150,610)	\$1,689,260	\$1
10	\$75,522	\$49,426	\$7,578	\$132,526	\$25,744	\$0	\$158,270	\$0	\$158,270	(\$80,240)	(\$78,029)	(\$158,269)	\$1,611,231	\$1
11	\$79,675	\$52,145	\$7,994	\$139,815	\$26,517	\$0	\$166,331	\$0	\$166,331	(\$76,533)	(\$89,797)	(\$166,330)	\$1,521,434	\$1
12	\$84,057	\$55,013	\$8,434	\$147,504	\$27,312	\$0	\$174,817	\$0	\$174,817	(\$72,268)	(\$102,548)	(\$174,816)	\$1,418,886	\$1
13	\$88,681	\$58,039	\$8,898	\$155,617	\$28,132	\$0	\$183,749	\$0	\$183,749	(\$67,397)	(\$116,351)	(\$183,748)	\$1,302,536	\$1
14	\$93,558	\$61,231	\$9,387	\$164,176	\$28,976	\$0	\$193,152	\$0	\$193,152	(\$61,870)	(\$131,280)	(\$193,151)	\$1,171,255	\$1
15	\$98,704	\$64,598	\$9,904	\$173,206	\$29,845	\$0	\$203,051	\$0	\$203,051	(\$55,635)	(\$147,415)	(\$203,050)	\$1,023,840	\$1
16	\$104,132	\$68,151	\$10,448	\$182,732	\$30,740	\$0	\$213,472	\$0	\$213,472	(\$48,632)	(\$164,839)	(\$213,471)	\$859,001	\$1
17	\$109,860	\$71,900	\$11,023	\$192,782	\$31,662	\$0	\$224,445	\$0	\$224,445	(\$40,803)	(\$183,641)	(\$224,444)	\$675,360	\$1
18	\$115,902	\$75,854	\$11,629	\$203,385	\$32,612	\$0	\$235,998	\$0	\$235,998	(\$32,080)	(\$203,917)	(\$235,997)	\$471,442	\$1
19	\$122,277	\$80,026	\$12,269	\$214,572	\$33,591	\$0	\$248,162	\$0	\$248,162	(\$22,394)	(\$225,768)	(\$248,161)	\$245,675	\$1
20	\$129,002	\$84,428	\$12,944	\$226,373	\$34,598	\$0	\$260,972	\$0	\$260,972	(\$11,670)	(\$245,675)	(\$257,344)	\$0	\$3,628
21	\$136,097	\$89,071	\$13,656	\$238,824	\$35,636	\$0	\$274,460	\$0	\$274,460	\$0	\$0	\$0	\$0	\$274,460
22	\$143,582	\$93,970	\$14,407	\$251,959	\$36,705	\$0	\$288,664	\$0	\$288,664	\$0	\$0	\$0	\$0	\$288,664
23	\$151,479	\$99,138	\$15,199	\$265,817	\$37,807	\$0	\$303,623	\$0	\$303,623	\$0	\$0	\$0	\$0	\$303,623
24	\$159,811	\$104,591	\$16,035	\$280,437	\$38,941	\$0	\$319,377	\$0	\$319,377	\$0	\$0	\$0	\$0	\$319,377
25	\$168,600	\$110,343	\$16,917	\$295,861	\$40,109	\$0	\$335,970	\$0	\$335,970	\$0	\$0	\$0	\$0	\$335,970
26						\$0								
27						\$0								
28						\$0								
29						\$0								
30						\$0								
Totals	\$2,386,197	\$1,561,547	\$242,589	\$4,190,334	\$719,378	\$0	\$5,231,714	(\$21,757)	\$5,258,090	(\$1,400,986)	(\$2,331,362)	(\$3,732,348)	\$27,163,088	\$1,525,741

\* Water & Sewer savings escalated 25% in years 2 and 3 to account for increased City rates to help fund new Water Treatment Plant

\*\* IRA ITC, Generator Grant & EV Charger Grant savings includes: Inflation Reduction Act Direct Payment (\$232,003), Dept of Homeland Security Emergency Mgmt Grant (\$84,000) and Charge Ahead Colorado EV Charging Station Grant (\$6000).

**EPC SCHEDULE H**  
**Certification that Cost-weighted Average Service Life of Equipment Exceeds**  
**Financing Term**

*The table below is an example of the information and calculations to determine the Cost-Weighted Average Service Life of utility cost-savings equipment (EPC Article 1-X (iv)).*

Energy Conservation Measure <sup>(1)</sup>	Measure Description	Construction Cost <sup>(2)</sup>	Service Life <sup>(3) (4)</sup>	Weighted Service Life <sup>(5)</sup>	Notes
01.02 Replace Radiant Infrared Heaters	Replace existing radiant infrared heaters over the spectator seating area with new radiant heaters with burners and flue vents that are designed to prevent condensation from forming that could drip on spectators.	\$ 76,043	21.0	0.399	Burners - ASHRAE Equipment Life Expectancy Chart
01.03 Replace Standing Pilot Heaters	The standing pilot unit heater serving the Parts Area is an outdated technology that has reached its ASHRAE life expectancy. Replace heater with new gas-fired electronic ignition unit heater.	\$ 10,919	13.0	0.036	Gas Unit Heaters - ASHRAE Equipment Life Expectancy Chart
01.05 Expand Snow Melt System	Add snowmelt system at entrance of outdoor rink and entrance of Zamboni building. New boiler, pump and controls to be installed in Zamboni building.	\$ 109,175	25.0	0.683	Steel Fire-tube Boilers - ASHRAE Equipment Life Expectancy Chart
01.06 Add HVAC System w- Zone Controls and Duct Mods	The City Shop is remodeling the water shop into office area and as result the existing HVAC system is not properly sized to serve this area. Included is a new furnace split system, mods to existing ductwork, new ductwork for remodeled area and a zoning control system.	\$ 95,610	15.0	0.359	Residential Split Package - ASHRAE Equipment Life Expectancy Chart
03.02 Replace Make Up Air Unit	Replace problematic make-up air unit that serves the rink area at the Ice Arena.	\$ 212,811	18.0	0.958	Furnaces-Gas or Oil Fired - ASHRAE Equipment Life Expectancy Chart
04.01 Building Automation System	Install central BAS controls on HVAC systems and implement modern control strategies with best-in-class control sequences.	\$ 399,772	15.0	1.500	Controls Electronic - ASHRAE Equipment Life Expectancy Chart
04.05 Night Setback for Ice Machine	Turn off ice-making machine at night to reduce energy use.	\$ -	N/A	N/A	No equipment associated with this measure
05.01 Retro-Commissioning and TAB	Improve operation and efficiency of existing HVAC equipment and systems. Includes Test at Balance and allowance for ductwork repair.	\$ 33,950	N/A	N/A	No equipment associated with this measure
05.02 Recommissioning	Work with staff to re-commission the water treatment plant systems. Verify that the water treatment systems are operating per the original control narratives. Where current sequences deviate from original design, McKinstry will document these differences and work with the staff to determine the correct course of action.	\$ 46,215	N/A	N/A	No equipment associated with this measure
06.01 Address Ice Melt Humidity Issues from Zamboni	The humidity associated with melting the Zamboni ice shavings is creating condensation that is corroding the metal structure of the Zamboni building. This measures consists of installing a humidistat controlled exhaust fan and larger unit heater to reduce the humidity levels of this building.	\$ 38,470	19.0	0.183	Gas Unit Heaters and Centrifugal Fans - ASHRAE Equipment Life Expectancy Chart
09.01 LED Lighting Upgrades	Replace existing non-LED lamps/ fixtures with new LED lamps/ fixtures to reduce energy and maintenance costs. New exterior fixtures will be dark sky compliant. Stand-alone occupancy and daylight harvesting controls will be utilized where advantageous.	\$ 323,794	15.0	1.215	Calculated based on the L70 rated hours for each fixture type and the annual hours of operation.
09.02 Ballpark Lighting	Replace existing non-LED Softball field lighting with new dark-sky compliant LED field lighting and raise light levels to IES recommendations.	\$ 453,132	25.0	2.834	For the pole fixtures, the life expectancy of the lighting is calculated to exceed 50 years but in all likelihood, these fixtures will change before then so McKinstry has elected to use 25 years for the life
09.04 Pond LED Lighting Upgrades	Install new pole and dedicated fixtures to illuminate ice skating pond by Ice Arena.	\$ 33,000	25.0	0.206	
10.01 Solar PV	Install roof-mounted solar photovoltaic system, 25 kW DC total.	\$ 722,188	27.8	5.013	A cost weighted life expectancy was determined based on the following life expectancies and cost percentage breakdown: 15 yrs for inverters (15% of cost), 30 years for racks (35% of cost), 30 years for modules (50% of cost).
10.03 Assessment of Solar Panels	Conduct a detailed condition assessment of the existing solar thermal system to determine the condition of the panels, piping, pumps, storage tanks, etc. Included in the assessment will be a condition rating, age of system, remaining life and replacement cost.	\$ 6,000	N/A	N/A	No equipment associated with this measure
11.02 New Generators	Furnish and install two new generators (one for Original section electrical service and one for Pool Addition electrical service).	\$ 835,629	30.0	6.271	20 - 40 years depending on maintenance and routine operation
13.01 Air Sealing and Weather Stripping	Add weather-stripping, door seals and spray foam to better seal building envelope, reduce infiltration, reduce energy use and improve occupant comfort. This includes man doors as well as over-head vehicle doors.	\$ 169,506	41.6	1.762	A cost weighted life expectancy was determined based on the following life expectancies and cost percentage breakdown: 10 years for weather-stripping (30% of cost), 60 years for spray foam (70% of cost)
17.01 Pool Water Treatment	Replace existing pool water treatment system with new treatment system that utilizes on-site sodium hypochlorite (chlorine) generation via electrochemical reaction between salt and water. Greatly reduces the need to store, handle and mix concentrated hazardous pool chemicals.	\$ 388,730	14.0	1.361	
21.01 EV Charging Station- Level 2	Install level-2 electric vehicle charging station at Community Center.	\$ 42,476	10.0	0.106	

<b>Total Project Cost <sup>(6)</sup></b>	<b>\$ 3,997,420</b>
<b>Estimated Utility Rebate</b>	<b>\$ (2,362)</b>
<b>Up-front City Capital</b>	<b>\$ (914,175)</b>
<b>DOLA Grant</b>	<b>\$ (749,521)</b>
<b>Inflation Reduction Act - Direct Payment</b>	<b>\$ (232,003)</b>
<b>Dept of Homeland Security - Emergency Mgmt Grant</b>	<b>\$ (84,000)</b>
<b>Chart Ahead Colorado Grant</b>	<b>\$ (6,000)</b>
<b>Net Financed Cost</b>	<b>\$ 2,009,359</b>
<b>Cost Weighted Life Expectancy <sup>(7)</sup></b>	<b>22.9 years</b>
<b>Financing Agreement Term <sup>(8)</sup></b>	<b>19.8</b>

Notes
(1) Final Accepted List of Improvements
(2) Construction Cost as defined on the CEO Cost Estimating Tool
(3) Service Life (indicate source of service life by ECM on the following table)
(4) Provide an abbreviation of the source, then below this table the source full name, date of publication, and any additional information necessary to confirm the value
(5) Formula: Cost of Improvement multiplied by Service Life then divided by Total Construction Cost
(6) Total Construction Cost per CEO Cost Estimating Tool
(7) Total of ECM/FIM Individual Average Service Life Values <i>Formula: Cost-Weighted Average Service Life = <math>\sum</math> each ECM ÷ total construction cost × service life</i>
(8) Financing Agreement Term from final Principal Representative financing documents <b>(Section 24-30-2001(1)(d),C.R.S.</b> states that the maximum term of the payments shall be less than the Cost- Weighted Average Useful ( <i>service</i> ) Life of utility cost-savings equipment for which the contract is made, not to exceed 25 years)

Service Life Supporting Tables - ASHRAE

ASHRAE Equipment Life Expectancy Chart					
Equipment Item	Median Years	Equipment Item	Median Years	Equipment Item	Median Years
Air Conditioners		Air terminals		Air-cooled condensers	20
Window Unit	10	Diffusers, grilles and registers	27	Evaporative condensers	20
Residential single or Split Packag	15	Induction and fan coil units	20	Insulation	
Commercial through-the wall	15	VAV and double-duct boxes	20	Molded	20
Water-cooled package	15	Air washers	17	Blanket	24
Heat Pumps		Ductwork	30	Pumps	
Residential air-to-air	15	Dampers	20	Base-mounted	20
Commercial air-to-air	15	Fans		Pipe-mounted	10
Commercial water-to-air	19	Centrifugal	25	Sump and well	10
Roof-top air conditioners		Axial	20	Condensate	15
Single-zone	15	Propeller	15	Reciprocating engines	20
Multi-zone	15	Ventilating roof-mounted	20	Steam turbines	30
Boilers, hot water (steam)		Coils		Electric motors	18
Steel water-tube	24 (30)	DX, water, or steam	20	Motor starters	17
Steel fire-tube	25 (25)	Electric	15	Electric transformers	30
Cast iron	35 (30)	Heat Exchangers		Controls	
Electric	15	Shell-and-tube	24	Pneumatic	20
Burners	21	Reciprocating compressors	20	Electric	16
Furnaces		Packaged chillers		Electronic	15
Gas- or oil-fired	18	Reciprocating	20	Valve actuators	
Unit Heaters		Centrifugal	23	Hydraulic	15
Gas or electric	13	Absorption	23	Pneumatic	20
Hot water or steam	20	Cooling towers		Self-contained	10
Radiant Heaters		Galvanized metal	20		
Electric	10	Wood	20		
Hot water or steam	25	Ceramic	34		

Service Life Supporting Tables – BOMA

System	Est. Life (Yrs) *
Exterior Structure	
A1010 Standard Foundations	100
A1020 Special Foundations	100
A1030 Slab on Grade	100
A2020 Basement Walls	100
B1010 Floor Construction	100
B1020 Roof Construction	100
B2010 Exterior Walls	100
B2020 Exterior Windows	25
B2030 Exterior Doors	25
B3010 Roof Coverings	15
B3020 Roof Openings	20
Interior Structure C1010 Partitions	40
C1020 Interior Doors	40
C1030 Fittings	40
C2010 Stair Construction	40
C3010 Wall Finishes	10
C3020 Floor Finishes	15
C3030 Ceiling Finishes	20
Conveying D1010 Elevators and Lifts	30
Plumbing D2010 Plumbing Fixtures	30
D2020 Domestic Water Distribution	30
D2030 Sanitary Waste	30
D2040 Rain Water Drainage	30
D2090 Other Plumbing Systems	30
HVAC D3010 Energy Supply	25
D3020 Heat Generating Systems	25
D3030 Cooling Generating Systems	25
D3040 HVAC Distribution Systems	25
D3050 Terminal & Package Units	25
D3060 HVAC Controls & Instrumentation	25
D3090 Other HVAC Systems/Equip	25
Life/Fire Safety D4010 Sprinklers	25
D4020 Standpipes	25
D4030 Fire Protection Specialties	25
D4090 Other Fire Protection Systems	25
Electrical D5010 Electrical Service/Dist.	30
D5020 Lighting and Branch Wiring	20
D5030 Communications and Security	10
D5090 Other Electrical Systems	30
Equipment E1010 Commercial Equip.	20
E1020 Institutional Equipment	20
E1030 Vehicular Equipment	20
E1090 Other Equipment	20
Life/Fire Safety D4010 Sprinklers	25
D4020 Standpipes	25
D4030 Fire Protection Specialties	25
D4090 Other Fire Protection Systems	25
Electrical D5010 Electrical Service/Dist.	30
D5020 Lighting and Branch Wiring	20
D5030 Communications and Security	10
D5090 Other Electrical Systems	30
Equipment E1010 Commercial Equip.	20
E1020 Institutional Equipment	20
E1030 Vehicular Equipment	20
E1090 Other Equipment	20
Furnishings E2010 Fixed Furnishings	15
E2020 Moveable Furnishings	15
*Source BOMA 1996 System Group Life Renewal	



## EPC SCHEDULE I

### RECORD OF REVIEWS (LOCAL GOVERNMENTS)

*This review process is required for all Energy Performance Contracting (EPC) work with any state agencies or Political Subdivisions participating in the Colorado Energy Performance Contracting Program (CEPCP). This document outlines and tracks selected items reviewed by the Colorado Energy Office and/or its Consultants and the Office of the State Architect (OSA), as applicable, of the Investment Grade Audit (IGA) and EPC Project Proposal contract, the IGA Audit Report and EPC Project Proposal, and the EPC documents. These reviews are not legal reviews of the documents and do not replace the Political Subdivision's legal review. The financing proposal (bank loan, bonds, internal funds, or other financing method) is not included in the CEO/OSA review. State agencies shall consult with the State Treasury's office for any financial review/reporting requirements. Political Subdivisions shall perform their own review of the financing proposal.*

**INVESTMENT GRADE AUDIT CONTRACT** (this review shall be completed by a CEPCP member, the Principal Representative of the Governing Body of the Political Subdivision, and, as necessary, the OSA, prior to the ESCO signing the IGA contract)

The IGA Contract review establishes:

- Confirmation that the CEPCP-provided IGA contract and exhibits are being used;
- Scope of Work (IGA Exhibit A) if modified, was only modified within the generally historically allowed changes with approval of the client, the CEPCP reviewer, and OSA as applicable;
- ESCO cost and pricing elements are within the boundaries of the EPC base agreement contract with CEPCP program; and
- No additions, subtractions, or changes have been made to the IGA contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, and OSA as applicable.

**CEPCP Reviewer:** \_\_\_\_\_ **Date Completed:** \_\_\_\_\_

**Reviewers Comments:** \_\_\_\_\_

**Client Reviewer:** \_\_\_\_\_ **Date Completed:** \_\_\_\_\_

**Reviewers Comments:** \_\_\_\_\_

**INVESTMENT GRADE AUDIT REPORT AND PROJECT PROPOSAL** (This review shall be completed by a CEPCP member, the Principal Representative, and, as necessary, OSA, prior to finalizing the EPC Project Proposal for an EPC contract)

IGA report review addressed the following:

- IGA has met the minimum requirements as outlined in the CEPCP IGA Exhibit A, Scope of Work;
- Verifies compliance with all applicable legislation for state governments;
- Reviews existing operational assumptions and adds notes as necessary to the Principal Representative and ESCO verifying assumptions are confirmed by the Principal Representative;
- Confirms that adequate technical details follow appropriate methodologies and assumptions used to calculate savings (utility usage reduction) for each Utility Cost Savings Measure or FIM;
- Confirms costs document: engineering/design costs, contractor/vendor estimates, fees, estimated code compliance cost, etc.
- Principal Representative confirms that any operation and/or maintenance (O&M) savings proposed by the ESCO are acceptable. The sufficiency of O&M savings are not reviewed by the CEPCP;
  - Principal Representative Signature \_\_\_\_\_
  - Date: \_\_\_\_\_
- Principal Representative confirms that presented operations, schedules, set points, etc. are acceptable.
  - Principal Representative Signature \_\_\_\_\_
  - Date: \_\_\_\_\_
- Principal Representative confirms commissioning, M&V plans, and any non-verified calculated savings, are in compliance with the CEPCP and that the Principal Representative understands and accepts these items and schedules.



## EPC SCHEDULE I

### RECORD OF REVIEWS (LOCAL GOVERNMENTS)

- Principal Representative Signature \_\_\_\_\_
- Date: \_\_\_\_\_
- Principal Representative confirms, when applicable, the Principal Representative's annual or one-time monetary contributions are included in the financial performance schedule. The sufficiency of such contributions is not reviewed by the CEPCP.
  - Principal Representative Signature \_\_\_\_\_
  - Date: \_\_\_\_\_
- Principal Representative confirms acceptance of presented annual utility and inflation escalation rates.
  - Principal Representative Signature \_\_\_\_\_
  - Date: \_\_\_\_\_

**CEPCP Reviewer:** \_\_\_\_\_ **Date Completed:** \_\_\_\_\_

**Reviewers Comments:** \_\_\_\_\_

**Principal Representative** **Date Completed:** \_\_\_\_\_

**Reviewer:** \_\_\_\_\_

**Reviewers Comments:** \_\_\_\_\_

**ENERGY PERFORMANCE CONTRACT** (this shall be completed by a CEPCP member, the Principal Representative, and as necessary, OSA, prior to the ESCO signing the contract)

The EPC review establishes the following:

- Confirms that the CEPCP provided EPC contract and schedules are being used;
- ESCO cost and pricing elements are within the boundaries of their EPC base agreement contract with CEPCP;
- No additions, subtractions, or changes have been made to the contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, a Principal Representative legal review, and Principal Representative Controller (or equivalent);
- If modified, all modifications, updates, additions to the schedules and exhibits are within the generally historically allowed changes. All changes are tracked until accepted by CEPCP reviewer and OSA as applicable; and
- Confirms the pro-forma schedule includes all known Principal Representative funds, utility rebates, other grant funds, and all potential cost through the length of the loan.

**CEPCP Reviewer:** \_\_\_\_\_ **Date Completed:** \_\_\_\_\_

**Reviewers Comments:** \_\_\_\_\_

**Principal Representative** **Date Completed:** \_\_\_\_\_

**Reviewer:** \_\_\_\_\_

**Reviewers Comments:** \_\_\_\_\_

# EPC SCHEDULE J: CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS (UI-1)

Institution/Agency: City of Gunnison, Colorado

Project No./Name: City of Gunnison Energy Performance Contract

## A. CERTIFICATION STATEMENT CRS 8-17.5-101 & 102 (HB 06-1343, SB 08-193)

The Vendor, whose name and signature appear below, certifies and agrees as follows:

1. The Vendor shall comply with the provisions of CRS 8-17.5-101 et seq. The Vendor shall not knowingly employ or contract with an unauthorized immigrant to perform work for the State or enter into a contract with a subcontractor that knowingly employs or contracts with an unauthorized immigrant.
2. The Vendor certifies that it does not now knowingly employ or contract with an unauthorized immigrant who will perform work under this contract, and that it will participate in either (i) the "E-Verify Program", jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired to perform work under this contract.
3. The Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Vendor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate work for breach and the Vendor shall be liable for damages to the State.

## B. AFFIDAVIT CRS 24-76.5-101 (HB 06S-1023)

4. If the Vendor is a sole proprietor, the undersigned hereby swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):

☒ I am a United States citizen, or

☐ I am a Permanent Resident of the United States, or

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

I understand that this sworn statement is required by law because I am a sole proprietor entering into a contract to perform work for the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to starting work for the State. I further acknowledge that I will comply with the requirements of CRS 24-76.5-101 et seq. and will produce the required form of identification prior to starting work. I acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under CRS 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

CERTIFIED and AGREED to this 24th day of January 2023.

VENDOR:

McKinstry Essention LLC

Vendor Full Legal Name

BY: 

Signature of Authorized Representative

Regional Director

Title

**EPC SCHEDULE K  
CERTIFICATE OF INSURANCE (INCLUDING PROFESSIONAL ERRORS  
AND OMISSIONS LIABILITY INSURANCE)**

To be provided under separate cover at the time of Contract signature.

DRAFT

## **EPC SCHEDULE L PERFORMANCE BOND**

“Performance Bond” means a surety bond guaranteeing that the Contractor will fulfill their contractual obligations for the scope of the Project.

Per City of Gunnison requirements, Contractor shall furnish performance and payment bonds, each in an amount equal to 50% of the construction cost of the work less fee for annual M&V services. The bonds shall cover completion of the physical work per the approved design and shall not guarantee or warranty efficiency or system performance. The bonds shall not cover any obligation of the contractor to ensure that the work as constructed will result in any particular level of energy savings.

The Performance Bond will be provided after execution of this Contract.

DRAFT

**EPC SCHEDULE M**  
**LABOR AND MATERIAL PAYMENT BOND (SC-6.221)**

Per City of Gunnison requirements, Contractor shall furnish performance and payment bonds, each in an amount equal to 50% of the construction cost of the work less fee for annual M&V services. The bonds shall cover completion of the physical work per the approved design, and shall not guarantee or warranty efficiency or system performance. The bonds shall not cover any obligation of the contractor to ensure that the work as constructed will result in any particular level of energy savings.

The Labor and Material Payment Bond will be provided after execution of this Contract.

DRAFT

## **EPC SCHEDULE N STANDARDS OF COMFORT**

Existing occupied thermal comfort conditions will be maintained with one exception, the proposed Building Automation System for the Gunnison Community Center, where McKinstry is proposing a slight (2°F) increase to the occupied pool space temperature. The proposed pool space temperature will be 86°F.

The remaining energy conservation measures listed do not impact existing occupied space temperature setpoints.

Unoccupied space thermostat set points and HVAC equipment operating schedules will be modified in some cases to achieve energy savings.

Refer to "Appendix H - Savings Calculations" of the 100% IGA Report in Schedule B of the EPC Contract for proposed occupied and unoccupied setpoints at buildings.

## **EPC SCHEDULE O**

### **CLIENT CONSTRUCTION SPECIFICATIONS**

The Customer does not have construction specifications for the design of this project. Contractor's design standards were utilized to develop the scopes of work for the project. Any deviations from Contractor's standards may result in cost increases to the Customer.

DRAFT



## **EPC SCHEDULE P CONTRACTORS INTELLECTUAL PROPERTY**

Software and other works purchased or developed by McKinstry which is not specifically indicated as deliverables under this contract's Scope of Work will remain McKinstry's Intellectual Property. Any software or property hosted by McKinstry, to which Principal Representative may be granted access, remains McKinstry's Intellectual Property. McKinstry is not expected to deliver, in part or whole, any of McKinstry's property not specifically indicated in the Scope of Work.

DRAFT

# **EPC SCHEDULE Q**

## **SYSTEM START-UP AND COMMISSIONING**

The start-up and commissioning plans for each Energy Conservation Measure (ECM) will be based on the standard plans below.

### **A. STANDARD START-UP PLAN**

Start-up of HVAC equipment, generators, Building Automation Systems and Solar PV systems will be provided by the installing contractors. Review and approval of contractor equipment pre-startup and startup plans and activities will be provided by McKinstry commissioning agent.

### **B. STANDARD COMMISSIONING PLAN**

The following preliminary commissioning plan is designed as a framework from which the final commissioning plan will be developed. The presence of owner personnel may be requested during the commissioning process.

Systems included with commissioning scope are listed below.

#### **Mechanical**

- Infrared heaters
- Gas Unit heaters
- Gas / DX split systems
- Snowmelt system
- Makeup Air Unit
- Dehumidification fan/controls for Zamboni Bldg
- Pool dehumidification unit
- Existing mechanical equipment BAS integration (including Pool equipment)

#### **Electrical**

- Photovoltaic Systems (Solar PV arrays)
- Automatic lighting controls
- Standby Generators

The McKinstry commissioning team in collaboration with the Political Subdivision will:

- Review and participate in the finalization of the design documents, subcontractor plans and equipment selection.
- Review submittals to ensure that controls protocols and system performance align with the energy savings guarantees and design intentions.
- Review and approve control sequences with M&V and energy engineer.
- Review and approve contractor equipment pre-startup and startup plans and activities. Document that necessary procedures are followed to ensure the integrity and performance of the physical systems.
- Create and distribute pre-functional tests to the various responsible contractors and oversee the execution of the contractor's QA/QC program. Start-up template forms will be distributed for the solar PV systems.
- Perform functional testing for HVAC and Controls to validate equipment performance and verify that control sequence programming is correct and meets intent. Pre-functional test procedures for the solar PV systems will be reviewed by McKinstry Cx agent but performed by solar PV contractor.
- Verify the necessary trends are in place within the Building Automation Systems.
- Analyze trend data to review performance. Provide performance validation for solar PV systems upon receipt of permission to operate.
- Review, approve, and help coordinate contractor training programs with the owner.
- Provide final commissioning report with all findings and supporting documents

# **EPC SCHEDULE Q**

## **SYSTEM START-UP AND COMMISSIONING**

### **C. ECM SPECIFIC COMMISSIONING CLARIFICATIONS**

- LED Lighting Upgrades
  - Due to the straightforward nature of this ECM, inspections will be completed on a representative sample of fixtures by a McKinstry Site Superintendent. Typically, a minimum of the top 20% energy saving line items will be visually verified. Lighting controls will be commissioned by the McKinstry commissioning agent.
- Solar Photovoltaics
  - Commissioning for solar PV systems follows the standard commissioning plan. Of significant note is that functional testing is accomplished as an entire system comparing available solar energy to the electrical production of the inverter. The angles, ambient temperature, and industry standard numbers for reflectance and emittance will be utilized to validate that the installed system can produce the designed power density.

### **D. EXCLUSIONS**

The following items are excluded from the Commissioning scope of work unless noted in the scope of work for each measure:

- Existing HVAC systems that are not slated to be replaced as part of this project.
- Existing building automation systems that are not slated to be replaced as part of this project.
- Existing building automation systems that are not slated to be replaced as part of this project.
- Existing lighting control systems.
- Fire protection and life safety systems.
- Elevators.
- Back-up generators and emergency power systems that are not associated with McKinstry's scope of work.
- Electrical services/devices not associated with McKinstry Work
- Egress and/or emergency systems.

## **EPC SCHEDULE R CONTRACTOR TRAINING RESPONSIBILITIES**

The Customer (Political Subdivision) shall determine all attendees at the following trainings. The trainings will be based on the Contractor's experience and the Customer's needs. The trainings will include use and maintenance of the installed equipment per the manufacturer's recommendations. The trainings will include the warranty process. The Customer shall approve the final agenda for each training.

Training agenda and topics shall be developed by McKinstry and will include a review of sequences of operation, proper equipment operation, diagnosing and troubleshooting equipment failures, and preventive maintenance. Contractor and the Customer shall approve the final training agenda. The training shall include a total of 12 hours of onsite training sessions that are divided among the installed ECMs where training is applicable, which will be recorded with audio and video at the Customer's request. Audio/video recording will be done by McKinstry (quality of video/sound not guaranteed).

<b><u>Energy Conservation Measure (ECM)</u></b>	<b><u>Training Duration</u></b>
Building Automation System and other Stand-alone Controls	4 hours
LED Lighting Upgrades	2 hour
Solar PV	2 hours
Generators	2 hours
HVAC Equipment (Make-up Air Unit, Radiant Heaters, Furnace Split System, Snow Melt System, Unit Heater, Humidity Control System)	4 hours

## **EPC SCHEDULE S**

### **CUSTOMER MAINTENANCE RESPONSIBILITIES**

The Customer (Political Subdivision) shall provide the following services as part of this Contract.

1. Maintain all equipment per manufacturers' recommendations.
2. Maintain active and updated maintenance logs for all equipment. Logs shall be kept for a minimum of the warranty period and must be provided to Contractor upon request in either electronic or hard copy format.
3. Maintain all sequence of operations and performance criteria related to installed systems as proposed and designed. This shall include but not be limited to making adjustments to occupancy schedules based upon Customer calendars, taking into account holidays, scheduled shutdowns, etc. The Customer shall maintain schedules to minimize equipment operation.
4. Upon request of Contractor, provide Contractor with copies of actual monthly utility billing information on a monthly basis for the duration of this contract. This includes utility bills for electric and natural gas usage. The associated facilities where utility information shall be provided include all meters providing direct or indirect service to all buildings included in this project.
5. Provide Contractor continuous full access to Building Automation Systems for the purpose of collecting and trending data over time as required for performance verification.
6. The Customer shall notify Contractor in writing with regard to any changes or alterations to buildings that will affect energy usage. This notification must be provided within one month of the change. This includes occupancy or use changes, computer load or other load changes, scheduling changes, and sequence of operations changes.

McKinstry encourages all of our clients to make sure their insurance policy includes their new solar photovoltaic (PV) systems to cover any unforeseen issues like hail, wind, or vandalism.

McKinstry is not including Solar PV operations and maintenance for the PV systems. Operation and maintenance activities of the proposed systems in Schedule B will be the responsibility of the Customer starting after notice of substantial completion by ECM, building or area.

It is the Contractor's responsibility for routine maintenance of equipment installed as part of this contract until the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion. Contractor is not responsible for any maintenance on existing equipment or the systems they are connected to. Customer shall be responsible for all maintenance activities subsequent to execution of either the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion

In addition to the maintenance responsibilities described above, the Customer shall maintain a log of all maintenance activities as described in the maintenance checklist provided with the O&M manuals.

**Schedule T**  
**Notice of Substantial Completion**

**Notice of Substantial Completion (per ECM / FIM)**

Date of Notice \_\_\_\_\_

Local Government Entity: \_\_\_\_\_

Contractor: \_\_\_\_\_

Contract Name / #: \_\_\_\_\_

Notice is hereby given that the City of Gunnison accepts the installed equipment for ECM / FIM  
\_\_\_\_\_ and establishes a warranty period start date of \_\_\_\_\_.

City of Gunnison

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

When completely executed, this form is to be sent by certified mail to the Contractor by City of  
Gunnison

**Schedule U**  
**Notice of Final Acceptance**

**Notice of Final Acceptance**

Date of Notice \_\_\_\_\_

Local Government Entity: \_\_\_\_\_

Contractor: \_\_\_\_\_

Contract Name / #: \_\_\_\_\_

Notice is hereby given that City of Gunnison accepts the Project and establishes a Performance Commencement Date of \_\_\_\_\_.

City of Gunnison

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

When completely executed, this form is to be sent by certified mail to the Contractor by City of Gunnison.

## EPC SCHEDULE V OWNER ACKNOWLEDGEMENT FORM

Our experience shows us that an informed and engaged customer is most likely to fully understand the EPC process and be satisfied by the outcome. It is important for our customers and all relevant stakeholders to understand the key elements of various facility improvement measures and their impact on the facilities and operations. The following list helps to ensure that McKinstry has addressed any questions that the Customer may have about the process, implementation, and end goals of the program.

Initial	Item
	This report been distributed and reviewed by staff, stakeholders and all other applicable parties that may be responsible for implementing or maintaining elements of specific facility improvement measures.
	This report has been reviewed by key decision makers and their comments (if any) have been compiled and provided to McKinstry.
	The M&V Plan established for each ECM has been reviewed and accepted as the means which guaranteed savings will be evaluated. Please note that there are some City of Gunnison obligations that are necessary for the M&V to be executed as planned.
	<p>City of Gunnison confirms that the standards of comfort, including occupied and unoccupied setpoints, as outlined in Appendix H and are acceptable to the City. City of Gunnison agrees to conform to these standards for equipment in project scope with M&amp;V KPIs tied to these setpoints. City of Gunnison may implement more aggressive setpoints at their discretion.</p> <p>It should be noted that McKinstry is proposing a slight increase (2°F) to the occupied temperature setpoint for the pool area in the Community Center. This will raise the pool space temperature to 86°F.</p>
	<p>City of Gunnison agrees to notify McKinstry of any major changes to the operation of any facilities involved within this project. Examples of these changes include:</p> <ul style="list-style-type: none"> <li>• Changes to facility operation hours</li> <li>• Additions / Remodels / Future Construction</li> <li>• Changes in Space Type</li> <li>• Major changes to building occupancy or schedules</li> <li>• Major changes to facility use / activities</li> <li>• Major changes to facility equipment</li> </ul>
	City of Gunnison agrees to properly maintain all new equipment installed as part of this project per the manufacturer's and McKinstry's recommendations. If equipment fails outside of warranty, the City will replace equipment with like kind to maintain the savings guarantee.
	City of Gunnison agrees to have appropriate staff members or representatives attend trainings and witness major equipment start-ups.
	City of Gunnison has reviewed the exclusions and clarifications in Section 4 of the IGA Report.



## EPC SCHEDULE V OWNER ACKNOWLEDGEMENT FORM

Initial	Item
	<p>City of Gunnison acknowledges that lighting will change in areas where lighting scope is present.</p> <p>The lighting design approach is to retrofit existing fixtures and replace select fixtures where noted in Appendix A of the IGA. Light levels may be constrained by existing fixture types, layout and configuration (spacing &amp; orientation). Since the lighting project is based on retrofitting existing fixtures and utilizing existing electrical services, it may not be possible to meet the exact target uniformity values in all spaces.</p>
	<p>City of Gunnison acknowledges that any damaged lighting fixture lenses or sockets (tombstones) will be replaced up to the amount of the allowances disclosed in the lighting exclusions and clarifications section of the IGA Report. McKinstry will request the use of contingency funds to replace any lenses or sockets that exceed the amount of the allowances.</p>
	<p>City of Gunnison acknowledges that the savings associated with turning off the ice machine at the Ice Arena are predicated on Ice Arena staff manually shutting the ice machine off at night. Savings are stipulated.</p>
	<p>City of Gunnison acknowledges that McKinstry is not responsible for any equipment, operations or deficiencies not explicitly covered under this scope of work.</p>
	<p>City of Gunnison acknowledges that they will be responsible for labor costs to replace solar photovoltaic inverters and panels that fail outside of McKinstry's one-year warranty and any warranties transferred from the solar subcontractor.</p>
	<p>City of Gunnison acknowledges that damage to solar photovoltaic system due to storms, vandalism, and/or accidents are excluded from the contract and is the responsibility of City.</p>
	<p>City of Gunnison acknowledges that to provide Measurement and Verification services that McKinstry requires the following for the duration of the performance period:</p> <ul style="list-style-type: none"> <li>• Maintain remote access to Building Automation Systems at the Community Center</li> <li>• Maintain McKinstry's ability to directly obtain City of Gunnison's utility billing data.</li> </ul>
	<p>City of Gunnison agrees to provide network data drop terminations as required for the various scopes of work (solar photovoltaic, building automation system, field lighting controls). McKinstry has included the cost to pull CAT6 wire from the existing network switches to the new data drop locations.</p>
	<p>City of Gunnison acknowledges that operation &amp; maintenance savings used in the project must be provided for by the maintenance budget for the life of those savings. Such funds will be used to pay any obligations clearly called out as operation &amp; maintenance savings in the project cash flow.</p>
	<p>City of Gunnison acknowledges that gas, electric, water and sewer utility escalation rates and maintenance escalation rates must be budgeted for the life of the project. Such funds will be used to pay any obligations in the project cash flow. The project uses escalation rates as identified in the cashflow in Section 4 of the IGA report.</p>

## EPC SCHEDULE V OWNER ACKNOWLEDGEMENT FORM

Initial	Item
	<p>Hazardous Materials / Asbestos: Abatement of any hazardous materials as well as the requisite costs and time needed for abatement are specifically excluded from this contract and McKinstry's scope of work.</p> <p>McKinstry's Corporate Policy does not allow for subcontracting abatement of asbestos or lead paint. If hazardous substances are detected, the City will contract separately for the identification and removal of any hazardous substances or the City's qualified personnel will conduct abatement and disposal of any hazardous substances.</p> <p>In the event of the discovery or release of hazardous substances on site, McKinstry will immediately notify City of Gunnison of the circumstances surrounding the discovery and restrict access of any persons in the vicinity until such time as City of Gunnison's authorized representative can take over supervision of the area.</p> <p>The City agrees and acknowledges that it has not relied upon or employed McKinstry to analyze or identify the presence of any hazardous substances.</p> <p>It is understood and agreed that McKinstry shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission of City of Gunnison or any professional consultant, contractor or subcontractor which City of Gunnison selects relating to the abatement of hazardous substances</p>

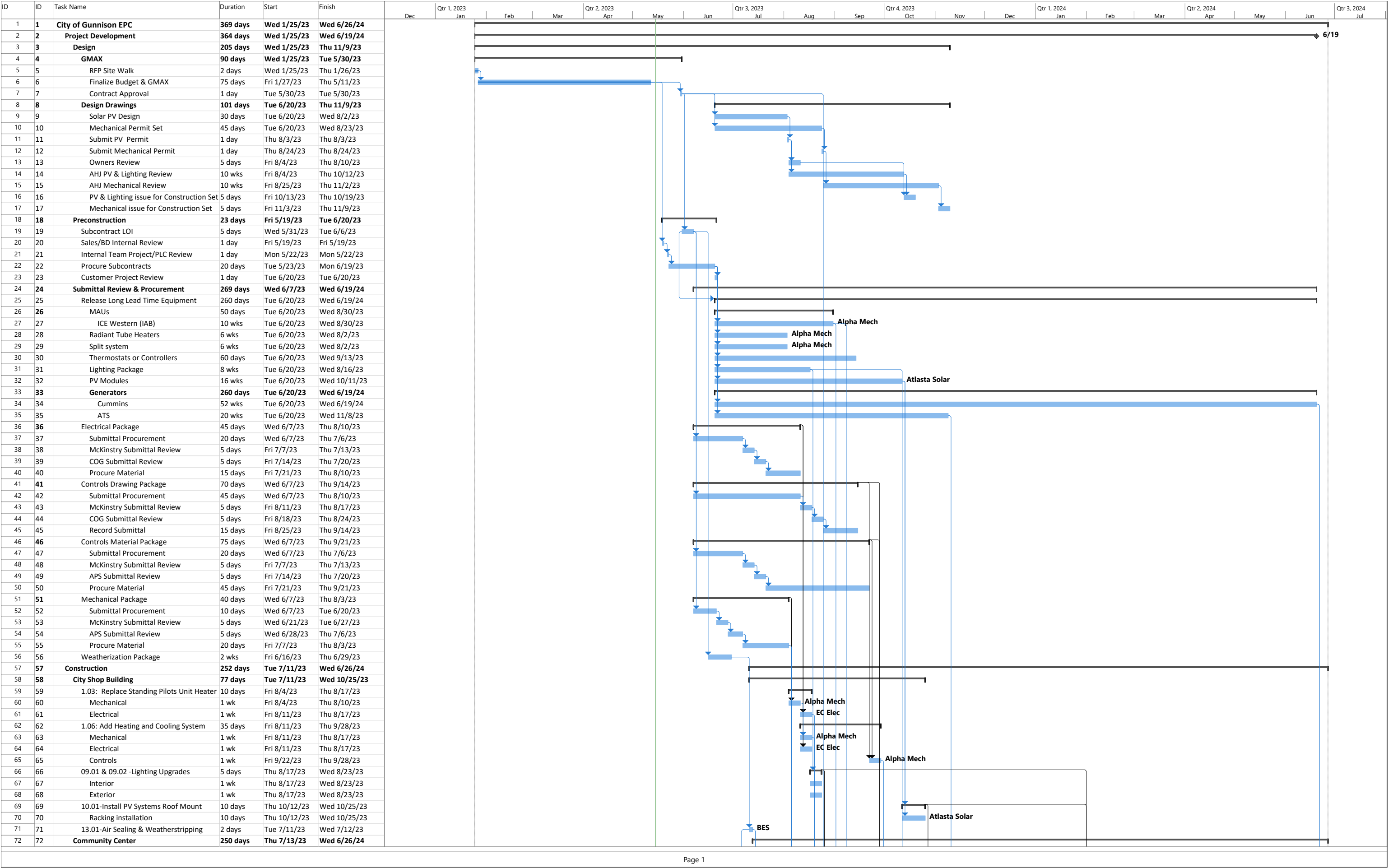
Printed Name: \_\_\_\_\_

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

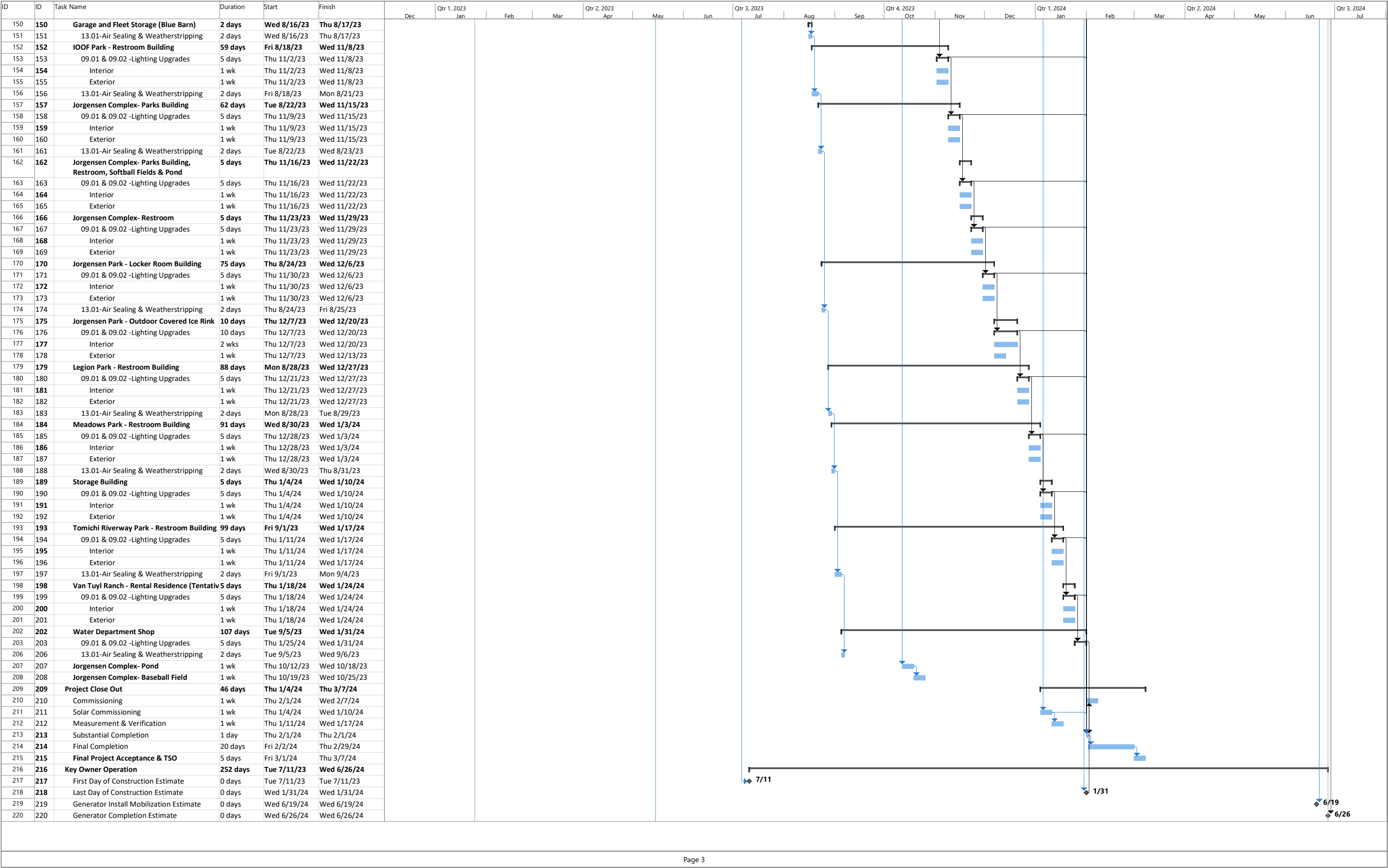
Date: \_\_\_\_\_

EPC SCHEDULE W  
CONSTRUCTION SCHEDULE

DRAFT



ID	ID	Task Name	Duration	Start	Finish	Dec	Qtr 1, 2023 Jan	Feb	Mar	Qtr 2, 2023 Apr	May	Jun	Qtr 3, 2023 Jul	Aug	Sep	Qtr 4, 2023 Oct	Nov	Dec	Qtr 1, 2024 Jan	Feb	Mar	Qtr 2, 2024 Apr	May	Jun	Qtr 3, 2024 Jul
73	73	4.01: Building Automation System	30 days	Fri 9/29/23	Thu 11/9/23																				
74	74	Pool Area	1 wk	Fri 9/29/23	Thu 10/5/23																				
75	75	Gymnasium	1 wk	Fri 10/6/23	Thu 10/12/23																				
76	76	Weight Room/Cafeteria	1 wk	Fri 10/13/23	Thu 10/19/23																				
77	77	Main Office	1 wk	Fri 10/20/23	Thu 10/26/23																				
78	78	Senior Addition	1 wk	Fri 10/27/23	Thu 11/2/23																				
79	79	Front End	1 wk	Fri 11/3/23	Thu 11/9/23																				
80	80	09.01 & 09.02 -Lighting Upgrades	15 days	Thu 8/24/23	Wed 9/13/23																				
81	81	Interior (night work)	3 wks	Thu 8/24/23	Wed 9/13/23																				
82	82	Exterior	1 wk	Thu 8/24/23	Wed 8/30/23																				
83	83	10.03-Install PV Systems Roof Mount	20 days	Thu 10/26/23	Wed 11/22/23																				
84	84	Meter 1	10 days	Thu 10/26/23	Wed 11/8/23																				
85	85	Racking installation	10 days	Thu 10/26/23	Wed 11/8/23																				
86	86	Meter 2	10 days	Thu 11/9/23	Wed 11/22/23																				
87	87	Racking installation	10 days	Thu 11/9/23	Wed 11/22/23																				
88	88	11.02-GCC Electrical Back-up Generator Connection	234 days	Fri 8/4/23	Wed 6/26/24																				
89	89	Trenching/Backfill	6 wks	Fri 8/4/23	Thu 9/14/23																				
90	90	Concrete Pads	3 wks	Fri 9/15/23	Thu 10/5/23																				
91	91	Electrical - Install new generators	1 wk	Thu 11/9/23	Wed 11/15/23																				
92	92	Provide & install generators	165 days	Thu 11/9/23	Wed 6/26/24																				
93	93	ATS Generator	1 wk	Thu 11/9/23	Wed 11/15/23																				
94	94	Cummins generator	1 wk	Thu 6/20/24	Wed 6/26/24																				
95	95	21.01-GCC Install EV Charging Station	30 days	Fri 9/8/23	Thu 10/19/23																				
96	96	EV Charging Station Pedestal	2 wks	Fri 10/6/23	Thu 10/19/23																				
97	97	Electrical	1 wk	Fri 9/8/23	Thu 9/14/23																				
98	98	13.01-Air Sealing & Weatherstripping	7 days	Thu 7/13/23	Fri 7/21/23																				
99	99	17.01-GCC Pool Water Treatment	3 days	Fri 8/25/23	Tue 8/29/23																				
100	100	Ice Arena	98 days	Mon 7/24/23	Wed 12/6/23																				
101	101	1.02: Replace Infrared Radiant Heaters	65 days	Fri 8/18/23	Thu 11/16/23																				
102	102	Mechanical	1 wk	Fri 8/18/23	Thu 8/24/23																				
103	103	Electrical	1 wk	Fri 8/18/23	Thu 8/24/23																				
104	104	Controls	1 wk	Fri 11/10/23	Thu 11/16/23																				
105	105	1.05: Expand Snow Melt System	65 days	Fri 8/25/23	Thu 11/23/23																				
106	106	Mechanical	1 wk	Fri 8/25/23	Thu 8/31/23																				
107	107	Electrical	1 wk	Fri 8/25/23	Thu 8/31/23																				
108	108	Controls	1 wk	Fri 11/17/23	Thu 11/23/23																				
109	109	3.02: Replace MAU	65 days	Fri 9/1/23	Thu 11/30/23																				
110	110	Mechanical	1 wk	Fri 9/1/23	Thu 9/7/23																				
111	111	Electrical	1 wk	Fri 9/1/23	Thu 9/7/23																				
112	112	Controls	1 wk	Fri 11/24/23	Thu 11/30/23																				
113	113	09.01 & 09.02 -Lighting Upgrades	10 days	Thu 9/14/23	Wed 9/27/23																				
114	114	Interior	2 wks	Thu 9/14/23	Wed 9/27/23																				
115	115	Exterior	1 wk	Thu 9/14/23	Wed 9/20/23																				
116	116	10.01-Install PV Systems Roof Mount	10 days	Thu 11/23/23	Wed 12/6/23																				
117	117	Boring	10 days	Thu 11/23/23	Wed 12/6/23																				
118	118	Racking installation	10 days	Thu 11/23/23	Wed 12/6/23																				
119	119	13.01-Air Sealing & Weatherstripping	2 days	Mon 7/24/23	Tue 7/25/23																				
120	120	Police Department	106 days	Wed 7/26/23	Wed 12/20/23																				
127	127	Waste Water Treatment Plant	114 days	Fri 7/28/23	Wed 1/3/24																				
128	128	09.01 & 09.02 -Lighting Upgrades	5 days	Thu 10/5/23	Wed 10/11/23																				
129	129	Interior	1 wk	Thu 10/5/23	Wed 10/11/23																				
130	130	Exterior	1 wk	Thu 10/5/23	Wed 10/11/23																				
131	131	10.01-Install PV Systems Roof Mount	10 days	Thu 12/21/23	Wed 1/3/24																				
132	132	Boring	10 days	Thu 12/21/23	Wed 1/3/24																				
133	133	Racking installation	10 days	Thu 12/21/23	Wed 1/3/24																				
134	134	13.01-Air Sealing & Weatherstripping	7 days	Fri 7/28/23	Mon 8/7/23																				
135	135	Char Mar Park- Restroom Building	52 days	Tue 8/8/23	Wed 10/18/23																				
136	136	09.01 & 09.02 -Lighting Upgrades	5 days	Thu 10/12/23	Wed 10/18/23																				
137	137	Interior	1 wk	Thu 10/12/23	Wed 10/18/23																				
138	138	Exterior	1 wk	Thu 10/12/23	Wed 10/18/23																				
139	139	13.01-Air Sealing & Weatherstripping	2 days	Tue 8/8/23	Wed 8/9/23																				
140	140	City Hall	55 days	Thu 8/10/23	Wed 10/25/23																				
141	141	09.01 & 09.02 -Lighting Upgrades	5 days	Thu 10/19/23	Wed 10/25/23																				
142	142	Interior (night work)	1 wk	Thu 10/19/23	Wed 10/25/23																				
143	143	Exterior	1 wk	Thu 10/19/23	Wed 10/25/23																				
144	144	13.01-Air Sealing & Weatherstripping	2 days	Thu 8/10/23	Fri 8/11/23																				
145	145	Electric Shop	58 days	Mon 8/14/23	Wed 11/1/23																				
146	146	09.01 & 09.02 -Lighting Upgrades	5 days	Thu 10/26/23	Wed 11/1/23																				
147	147	Interior	1 wk	Thu 10/26/23	Wed 11/1/23																				
148	148	Exterior	1 wk	Thu 10/26/23	Wed 11/1/23																				
149	149	13.01-Air Sealing & Weatherstripping	2 days	Mon 8/14/23	Tue 8/15/23																				



# EPC SCHEDULE X NOTICE TO PROCEED

## NOTICE TO PROCEED

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Date of Notice: \_\_\_\_\_

\_\_\_\_\_ Date to be inserted by the Principal Representative

Description of Work: \_\_\_\_\_

Institution/Agency: \_\_\_\_\_ City of Gunnison

Project No./Name: \_\_\_\_\_ City of Gunnison Energy Performance Contract

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To:  
McKinstry Essention, LLC

This is to advise you that your Insurance Policy and Certificates of Insurance, and Affidavit Regarding Unauthorized Immigrants have been received. Our issuance of this Notice does not relieve you of responsibility to assure that the bond and insurance requirements of the Contract Documents are met for the duration of the Agreement.

You are hereby authorized and directed to proceed within ten (10) days from date of this Authorization as required in the Agreement. Any liquidated damages for failure to achieve Substantial Completion by the date agreed that may be applicable to this contract will be calculated using the date of this Notice for the date of the commencement of the Design Phase of Work.

**The completion date of the project is**

By \_\_\_\_\_  
Principal Representative Date  
(or Authorized Delegate)  
City of Gunnison

When completely executed, this form is to be sent by certified mail to the Construction Manager by the Principal Representative; or delivered by any other means to which the parties agree.

**ORDINANCE NO. 7  
SERIES 2023**

**AN ORDINANCE OF THE CITY OF GUNNISON, COLORADO, APPROVING A LEASE PURCHASE FINANCING TO PROVIDE FUNDS TO FINANCE UTILITY COST-SAVINGS MEASURES AND FACILITY IMPROVEMENT MEASURES AND, IN CONNECTION THEREWITH, AUTHORIZING AND APPROVING A SITE LEASE, A LEASE PURCHASE AGREEMENT AND OTHER DOCUMENTATION RELATING TO THE FINANCING; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE FINANCING**

**WHEREAS**, the City of Gunnison, Colorado, is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (the “Charter”); and

**WHEREAS**, pursuant to Section 1.2 of the Charter, the City has the power to purchase, receive, hold and enjoy, or sell and dispose of real and personal property; and

**WHEREAS**, pursuant to Section 8.9 of the Charter, the City Council of the City (the “Council”) may, by ordinance, without the necessity of a vote of the registered electorate, enter into a rental or leasehold agreement that may provide for payment thereof by general appropriation levy and the obligation to pay such rental or leasehold cost shall not be construed to be part of the Charter’s limitation on indebtedness; and

**WHEREAS**, McKinstry Essention, LLC, a full-service design, build, operate and maintain firm (“Energy Performance Contractor”), has conducted an investment grade audit for the City analyzing certain utility cost savings measures and facility improvement measures, including but not limited to, new generators, installing a roof-mounted solar photovoltaic system, ballpark lighting replacement with LEDs, installing central building automated systems on HVAC systems, facility LED lighting upgrades and replacing the existing pool water treatment system and has presented to the Council an Energy Performance Contract to provide for such measures (collectively, the “Project”); and

**WHEREAS**, the Council has determined it is in the best interests of the City and its inhabitants that the City finance the Project through the long-term lease and leaseback, subject to annual appropriation, of (i) the Police/Dispatch Building, located in the City at 910 W. Bidwell Avenue, and (ii) the City Shop, located in the City at 1100 W. Virginia Avenue (collectively, the “Leased Property”, all as more specifically described in the Site Lease and Lease Agreement defined hereafter); and

**WHEREAS**, Northland Securities, Inc., acting as bank solicitor for the City, has assisted the City in requesting bids or proposals from banks or similar financial institutions to act as lender (the “Lender”) for the proposed lease financing (as described below, the “Lease Financing”), which bids or proposals are to be received prior to the adoption of this Ordinance; and

**WHEREAS**, under the Lease Financing, the City shall convey a long-term leasehold interest in the Leased Property to the Lender pursuant to a Site Lease (the “Site Lease”) between



the City, as lessor, and the Lender, as lessee, for a lump sum payment made by the Lender to the City (the "Lender Payment Amount"), and thereafter, pursuant to a Lease Purchase Agreement (the "Lease Agreement"), lease back the Leased Property from the Lender over a period which does not to exceed 25 years (which period will not exceed the useful life of the Leased Property); and

**WHEREAS**, the Lease Agreement is to expire on December 31 of any City fiscal year (each a "Fiscal Year") if the Council has, by such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Lease Agreement) and Additional Rentals (as defined in the Lease Agreement) estimated to be payable in the next ensuing Fiscal Year, and such Base Rentals and Additional Rentals payable by the City shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (as defined in the Lease Agreement) beyond the Fiscal Year for which such payments have been appropriated; and

**WHEREAS**, prior to final reading of this Ordinance, there has been presented to the Council forms of the documents authorized by this Ordinance, including the Site Lease and the Lease Agreement; and

**WHEREAS**, the Council desires to authorize and otherwise proceed with the Lease Financing.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:**

**Section 1. Authorization of Leasehold Conveyance Pursuant to Site Lease.** The Council hereby approves the conveyance to the Lender of the leasehold interest in the Leased Property in exchange for the Lender Payment Amount, which shall not exceed an aggregate principal amount of \$2,500,000. The duration of the Site Lease shall not extend beyond December 31, 2058. The Council determines and declares that the amount of the Lender Payment Amount represents fair and adequate consideration to the City for the sale and conveyance of the leasehold interest in the Leased Property.

**Section 2. Document Authorization.** The Site Lease and the Lease Agreement, in substantially the form and with substantially the same content as the form thereof made available to the Council, are in all respects approved, authorized and confirmed, and the Mayor is authorized and directed to execute the following documents in substantially the same form and with substantially the same content as presented to the Council, for and on behalf of the City, but with such changes therein as the Mayor may deem necessary or appropriate, as evidenced by the execution thereof the Site Lease and the Lease Agreement.

**Section 3. Parameters Relating to Lease Financing.** The Base Rentals, as set forth in the Lease Agreement, shall not exceed \$500,000 in any Fiscal Year and shall not be payable for a period which is greater than 22 years following the current Fiscal Year. The aggregate amount of the Base Rentals payable under the Lease Agreement shall not exceed a total of \$4,300,000. The net effective interest rate for the Lease Financing shall not exceed a

rate of 5.50% per annum, except in the event of a determination of taxability, as provided in the Lease Agreement.

**Section 4. Tax-Exempt Qualification.** The City hereby designates the Lease Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986 (the “Code”), as amended, in that the Lease Agreement is not a “private activity bond” as defined in the Code and the reasonably anticipated amount of “qualified tax exempt obligations” to be issued by the City (including all subordinate entities of the City) for the calendar year 2023 will not exceed \$10,000,000.

**Section 5. Execution of Miscellaneous Documents.** The City Clerk or, in the absence thereof, the designee of the City Clerk, is hereby authorized and directed to attest all signatures and acts of any official of the Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Site Lease and the Lease Agreement and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Mayor, the Finance Director and other officials, employees and agents of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional agreements (including, if necessary, an escrow agreement), certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance. Any action authorized by this Ordinance to be taken by the Mayor may, in the absence of the Mayor, be taken by the Mayor Pro-Tem.

**Section 6. Obligations of the City.** No provision of this Ordinance, the Site Lease or the Lease Agreement shall be construed as creating or constituting a general obligation or multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor a mandatory payment obligation of the City in any ensuing Fiscal Year beyond any Fiscal Year during which the Lease Agreement shall be in effect. The term of the Lease Agreement shall not extend beyond one year, subject to annual renewal, and the City shall have no obligation to make any payment except in connection with the payment of the Base Rentals and Additional Rentals in accordance with the provisions of the Lease Agreement.

**Section 7. Declarations and Findings.** The Council hereby determines and declares that the Base Rentals represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease Agreement) represents the fair purchase price of the Leased Property. The Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease Agreement or to exercise its option to purchase the Leased Property pursuant to the Lease Agreement. In making such determinations, the Council has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing or equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Leased Property pursuant to the terms and provisions of the Lease Agreement, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. The Council hereby determines and declares that the leasing of the Leased

Property pursuant to the Lease Agreement will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed, by the City other than pursuant to the Lease Agreement. The Council hereby determines and declares that the duration of the Lease Agreement, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property.

**Section 8. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or by the officers and employees of the City directed toward the Lease Financing for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 9. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 10. Repealer.** All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 11. Effective Date; Recording and Authentication.** This Ordinance shall be in full force and effect upon adoption. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the City Clerk, and shall be published in accordance with law and Section 6.3 of the Charter.

**INTRODUCED, READ, PASSED AND ORDERED PUBLISHED** the 23rd day of May, 2023, on first reading, and introduced, read, and adopted on second and final reading this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor

SEAL:

ATTEST:

\_\_\_\_\_  
City Clerk

Published by Title in the  
Gunnison Country Times Newspaper  
June 1, 2023



## Memorandum

**To:** City Council  
**From:** Lisa Starkebaum  
**Date:** 5/19/2023  
**Re:** Right-of-Way Permit Fees

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### **Purpose:**

To adopt an ordinance to amend the work in the right-of-way permit provisions contained in the Gunnison Municipal Code and establish an expedited Right-of-Way Permit fee.

### **Background:**

Currently the City of Gunnison charges fees for the issuance of a work in the right-of-way permit. While the City of Gunnison Fee Resolution sets the permit fee, this ordinance will establish the authority of City of Gunnison to collect an expedited permit fee. The regular fee and expedited fee will cover staff time to review and approve the permits and time needed for inspection to ensure the return of the surface to its pre-work condition. In addition, the ordinance does the following:

- Establishes a \$1000 expedited permit fee for persons requesting a right-of-way permit less than 7 days prior to their intention to excavate in the right-of-way if the request is not due to an emergent situation as determined by the Public Works Director.
- Establishes the authority for the City to require and hold a cash or surety bond to guarantee the return of the right-of-way surface to its pre-work condition.
- Clarifies and corrects certain sections of the Gunnison Municipal Code regarding fees associated with right-of-way permits and connections to the city water and wastewater systems.

### **Staff Recommendation:**

City staff recommends adoption of the attached proposed ordinance to clarify authority to collect right-of-way permit fees, establish an expedited permit fee, hold a bond, and amend the Gunnison Municipal Code in regards to right-of-way permits and connections to city water and wastewater systems.

### **Action(s) Requested of Council:**

- 1) Introduction of Ordinance No. 8, Series 2023 and request to read the ordinance by Title only.
- 2) A motion to approve Ordinance No. 8, Series 2023 on first reading and order to publish.

**ORDINANCE NO. 8  
SERIES 2023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING THE WORK IN THE RIGHT-OF-WAY PERMIT PROVISIONS CONTAINED IN SECTION 9.10.010, AND MAKING CORRESPONDING AMENDMENTS TO SECTIONS 12.10.030 AND 12.20.030 OF THE GUNNISON MUNICIPAL CODE**

**WHEREAS**, the City of Gunnison, Colorado, (the “City”), is a home rule municipality with authority to determine fees, rules and regulations regarding permits for work in the City’s rights of way; and,

**WHEREAS**, clarification is necessary for certain sections of the existing Municipal Code regarding fees associated with work in the right-of-way permits; and

**WHEREAS**, establishing an expedited right-of-way permit fee will discourage last minute submittal of permits while benefiting contractors that need a quick turn over and will cover additional staff time to approve permits ahead of the regular 7 calendar-day review time; and

**WHEREAS**, staff has recommended changes to Section 9.10.010, Section 12.10.030, and Section 12.20.030, to accomplish the purposes set forth herein.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:**

- 1. The City of Gunnison Municipal Code, Section 9.10.010 Excavations – Permit Required**, is hereby amended to read as follows:

It shall be unlawful for any person to dig any hole, drain, or ditch in any street or alley in the city without having first obtained a work in the right-of-way permit. Any person requesting a permit less than 7 days prior to their intention to excavate, which request is not due to an emergent situation as determined by the Public Works Director, shall pay an additional fee for an expedited permit. In addition, a cash or surety bond shall be provided to guarantee return of the right-of-way surface to its pre-work condition. City Council shall set the permit fee and expedited permit fee by resolution. Failure to obtain a permit prior to conducting any work in the right-of-way may result in fines and fees up to the jurisdictional limit of the City of Gunnison Municipal Court.

**2. The City of Gunnison Municipal Code, Section 12.10.030(A)(3) Permits and Costs,** is hereby amended to read as follows:

There are three fee components associated with the use of the city's wastewater collection and treatment system. Those fees are (a) the utility investment fee (b) the connection fee (c) and work in the right-of-way permit fee, as applicable (Section 9.10.010). All are required prior to issuance of a right-of-way permit required for work within any city right-of-way or easement that will result in connection to the city's wastewater collection and treatment system.

**3. Section 12.20.030(A)(3), Permits and Costs,** is hereby amended to read as follows:

There are three fee components associated with the use of the city's water system. Those fees are (a) the utility investment fee (b) the connection fee (c) and work in the right-of-way permit fee, as applicable (Section 9.10.010). All are required prior to issuance of a right-of-way permit required for work within any city right-of-way or easement that will result in connection to the city's wastewater collection and treatment system.

**4. Severability.** Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison, Colorado, that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.

**INTRODUCED, READ, PASSED AND ORDERED PUBLISHED** this 23<sup>rd</sup> day of May 2023, on first reading, and introduced, read, and adopted on second and final reading this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

SEAL:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Published by Title in the Gunnison  
Country Times Newspaper Xxx  
XX, 2023

**RESOLUTION NO. 10  
SERIES 2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GUNNISON,  
COLORADO, RESCHEDULING THE JUNE 27, 2023, REGULAR SESSION  
MEETING TO JUNE 20, 2023**

**WHEREAS**, Section 5.1 of the Home Rule Charter of the City of Gunnison, Colorado, stipulates that the City Council shall provide for the time and place of its regular meetings by resolution and shall hold at least one regular meeting each month; and

**WHEREAS**, the City Council wishes to cancel one such meeting, scheduled for Tuesday, June 27, 2023; and

**WHEREAS**, the City Council wishes to schedule a Regular Session meeting on Tuesday, June 20, 2023, at 5:30 p.m. in City Council Chambers.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF GUNNISON, COLORADO, THAT:**

The Regular Session meeting of the City Council scheduled for Tuesday, June 27, 2023, shall be rescheduled for June 20, 2023.

**INTRODUCED, READ, PASSED AND ADOPTED** at a Regular Session meeting of the City Council of the City of Gunnison, Colorado, held this 23<sup>rd</sup> day of May, 2023.

[CITY SEAL]

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk



TO: City Council  
FROM: Anton Sinkewich, Community Development Director  
Eric Jansen, Building Official  
Cody Tusing, City Engineer  
DATE: May 18, 2023  
RE: Non-Dam Feature Evaluation Proposal

**Purpose:**

This memo summarizes a formal request to the Council to consider the need for funding to facilitate a feasibility study of an existing dam-like structure located past the west end of Spencer Avenue on County Rd. 15. This structure was built in the floodplain next to the Gunnison River almost 40 years ago. The feasibility study is necessary before it can be considered for “certification” by FEMA and then incorporated into the new Flood Insurance Rate Maps (FIRM’s) that are currently being created. If this dam-like structure can be certified, it will directly benefit approximately 100 properties downstream in the City of Gunnison by removing them from the 1% annual chance floodplain (100-year flood plain) on the new FIRM maps. We have received an engineering evaluation proposal for the necessary assessment work for \$49,500.00.



Non-Dam Structure Location



**Background:**

The City of Gunnison is currently involved in a complete flood mapping revision process that is being led by the Colorado Water Conservation Board in partnerships with WSP engineering, local governments, stakeholders and FEMA in an effort to produce a new set of flood insurance rate maps (FIRM's) for the entire Gunnison County by 2026. As a result of this detailed process, the dam-like structure has been identified but cannot be accounted for in the floodplain modeling unless it is certified by FEMA. This structure was created after the last major flooding event of 1984 to prevent properties downstream of the structure from being inundated by floodwaters during future events. If this dam-like structure cannot be declared a "certified" structure by FEMA, then the new maps will depict the floodplain areas downstream of the structure as if it is not present.

It is important to have updated mapping to reflect current flood risk. Effective flood hazard mapping for the majority of Gunnison County is supported by data developed in the 1970s and 1980s. While the effective Flood Insurance Study (FIS) was revised in 2013, very few stream reaches along the East, Gunnison and Slate Rivers, portions of the Crystal River, and Tomichi Creek are included updated data. Now we have high resolution terrain data (from Light Detection and Ranging or LiDAR was flown from 2015 to 2019), and new modeling technologies to provide a more representative determination of current flood risk. Floodplains and floodways will increase and decrease along the various streams based on the revised technical data and analyses. Properties within the 1% annual chance floodplain (100-year floodplain) will be subject to mandatory flood insurance purchase if a structure has a federally backed mortgage/loan.

Flood risk changes over time. It is determined using topographic or terrain data to develop a representative model for an area that will simulate the effects of applying precipitation to a watershed area. The model results provide the amount of water (hydrology), where and how the water would move (hydraulics) through a given watershed to allow mapping of the estimated flooding extents along a stream or river corridor. Knowing our flood risk allows people to make informed decisions regarding public safety, protecting lives and property while helping communities plan or take action to reduce the impacts of flooding and become more resilient. Having this dam-like structure evaluated and hopefully "Certified" by FEMA is paramount for the future resiliency and safety of the City and its residents.

Included in your packet is the engineer's evaluation proposal for \$49,500.00

**Council's Strategic Criteria:**

This structure evaluation addresses/relates to the following criteria:

1. *Public Safety and Community Resiliency.*

The feasibility study is necessary before it can be considered for “certification” by FEMA and then incorporated into the new Flood Insurance Rate Maps (FIRM’s) that are currently being created. If this dam-like structure can be certified, it will directly benefit approximately 100 properties downstream in the City of Gunnison by removing them from the 1% annual chance floodplain (100-year flood plain) on the new FIRM maps. Flood control is an important component of our community’s ongoing safety and resiliency.

2. *Public Engagement which fosters racial and cultural equity, inclusivity, and diversity.*

N/A

3. *Achieving the City’s Environmental Sustainability Goals.*

The maintenance and potential certification of this “Non-Dam” structure is integral to the City’s focus on coordinated land use and infrastructure planning to ensure efficiency in water use and flood control stewardship to achieve the City’s environmental sustainability goals.

**Recommendation/Attachments:**

Engineer’s cost proposal for assessment of Non-Dam structure.

**Action requested by Council:**

Staff requests Council to motion, second, and vote to approve funding not to exceed 49,500.00 for the evaluation of the Non-Dam structure from Council's Strategic Implementation Plan, and direct staff to execute attached agreement with Wright Water Engineers Inc.



**Wright Water Engineers, Inc.**

818 Colorado Avenue, Suite 307, P.O. Box 219  
Glenwood Springs, Colorado 81602  
(970) 945-7755 TEL  
(970) 945-9210 FAX

www.wrightwater.com  
e-mail: [sschreiber@wrightwater.com](mailto:sschreiber@wrightwater.com)

April 18, 2023

**Via email:** [ctusing@gunnisonco.gov](mailto:ctusing@gunnisonco.gov)

Cody Tusing, PE  
City Engineer  
City of Gunnison  
1100 W. Virginia Avenue  
Gunnison, CO 81230

Re: Proposal for Non-Dam Feature Initial Evaluation (Attachment A)

Dear Cody:

Wright Water Engineers, Inc. (WWE) is pleased to provide this proposal for initial evaluation of the Non-Dam Feature for the City of Gunnison as it relates to the updated floodplain mapping for the City (project). This initial work to be completed involves understanding the existing conditions of the Non-Dam Feature as it relates to meeting the Federal Emergency Management Agency's (FEMA) certification process. This initial evaluation is considered a feasibility study to determine feasibility of accrediting this structure under FEMA guidelines.

This initial phase will document the existing conditions as it relates to FEMA criteria. Conceptual information will be provided as part of this task if the Non-Dam Feature does not meet FEMA criteria and what can be done to modify existing conditions to meet FEMA criteria. A future phase will be developed to provide engineering and construction drawings if modifications to the existing Non-Dam Feature are required as well as an Emergency Action Plan and Operations and Maintenance Plan if determine feasible to accredit this structure.

WWE has teamed with CMT Technical Services and SGM, Inc. on this project. CMT will provide a geotechnical evaluation for the stability of the Non-Dam Feature and the Non-Dam Feature foundation. See included proposal from CMT for this work. CMT will be subcontracted through WWE for this work. SGM will provide surveying services for the project. See attached proposal from SGM for survey work. The proposal includes three tasks of which the first two will be authorized initially. WWE has a standard markup of 10% on subcontractors.

**Task 1 – Project Management, Coordination and Meetings (±\$3,000):** This first task will be used to support general project management for the work to be completed. This will include meetings with the City and FEMA as needed to discuss the project approach, provide updates on the work completed, and discuss the outcome of this project. It is anticipated that the majority of the meetings for this work will take place virtually unless during a site visit to evaluate existing conditions.

**Task 2 – Background Data Review, Site Visit and Existing Conditions Evaluation (±\$6,000):**

This task will provide for review of readily available data on the existing Non-Dam Feature structure. It is understood there are no design plans available, but review of the After Action Report and interviews with people knowledgeable about the structure and its construction methods will be employed. This task will also provide for a robust site evaluation which will include RTK GPS based field survey completed by WWE, aerial drone evaluation of the structure, ground based photos of the structure, and measurements of various appurtenances associated with the structure. This work will also include a review of recently completed hydraulic modeling by FEMA and their subconsultants. WWE will also acquire LIDAR flown by the State of Colorado to support this project. Coordination with the State Engineer will also be completed to determine if additional state requirements exist. A map will be developed that compiles the available information along with survey completed under another task.

**Task 3 – Survey (±\$8,000):** WWE will coordinate with SGM to provide a topographic survey of the site. This topographic survey will provide a CAD based drawing with contours, points, and a digital elevation model of the topography. A signed and stamped PDF version of the survey will also be provided by a licensed surveyor. This proposal includes a boundary survey of the property to determine parcel extents. This information will be used as part of the geotechnical/structural evaluation and hydraulic model review. Please see attached proposal from SGM for more information. WWE has included time for coordination and implementation with SGM for this task.

**Task 4 – Hydraulic Model Review (±\$9,000):** WWE will complete a robust evaluation of the hydraulic model. It is understood FEMA has already completed hydraulic models of the floodplain through this area that WWE can utilize. If it is determined that the hydraulic model completed by FEMA does not accurately represent the Non-Dam Feature structure, coordination with the City will take place to discuss the level of effort to update the model or potentially work directly with FEMA to have them update the model appropriately. As part of this task WWE will evaluate the existing base flood elevations as they relate to the top of the Non-Dam Feature. WWE will complete its evaluation along the entire length of the Non-Dam Feature to evaluate the worst case scenario. WWE will develop graphical cross sections of this information to provide to the City and FEMA. This will be used to understand the existing freeboard of the Non-Dam Feature and if that meets FEMA requirements.

**Task 5 – Geotechnical Study (±\$13,500):** WWE will coordinate with CMT Technical Services to complete a geotechnical stability analysis of the Non-Dam Feature. This will include five bore holes along the crest of the embankment and one bore to the south of the embankment. CMT will utilize existing ongoing work with the City in which borings are being conducted on the north side of the embankment. CMT will analyze and evaluate the geotechnical information to provide a report which includes a stability analysis of the Non-Dam Feature during and after flood events. Please see included proposal from CMT for more information. WWE has included time for coordination and implementation with CMT for this task.

**Task 6 – Conceptual Recommendations for Non-Dam Feature Modifications (±\$5,000):** WWE and CMT will provide conceptual recommendations for modifications to the Non-Dam Feature if it is determined through previous tasks that the Non-Dam Feature does not meet FEMA criteria. This will include a matrix of options that can be employed along with budgetary costs.

**Task 7 – Summary Memo (±\$5,000):** This task will be used to develop a summary memo of the findings from this analysis. This memo will document the findings of the various tasks completed. This will include whether the Non-Dam Feature meets FEMA criteria or not. It will also include discussion of the next steps depending on the outcome of this analysis.

There are a few potential future tasks as they relate to this project. As understood this initial phase will be used to determine if the existing conditions of the Non-Dam Feature meet FEMA criteria. One future task might be the development of engineering designs and construction documents to modify or enhance the Non-Dam Feature to meet the criteria. Another future task would be the development of an Operations and Maintenance Plan and Emergency Action Plan for the Non-Dam Feature to meet FEMA criteria. These tasks will be discussed as the project progresses, at which time a proposal will be provided to the City for review.

This initial phase will have a budget of \$49,500 based on time and materials and not to exceed that amount without prior authorization. We will be able to start work on this project as soon as we receive the signed project agreement.

Please do not hesitate to call if you have any questions.

Sincerely,

WRIGHT WATER ENGINEERS, INC.

By 

\_\_\_\_\_  
Scott Schreiber, P.E., C.F.M  
Senior Water Resources Engineer

**WRIGHT WATER ENGINEERS, INC.**  
**2023 SCHEDULE OF HOURLY RATES**  
**SCHEDULE A**

PERSONNEL	RATE PER HOUR
SENIOR PRINCIPAL/CONSULTANT	\$254
PRINCIPAL/CONSULTANT	\$243
SENIOR PROJECT ENGINEER/CONSULTANT	\$218
SENIOR ENGINEER/SCIENTIST CONSULTANT	\$194
ENGINEERING/SCIENTIST PROFESSIONAL I	\$180
ENGINEERING SPECIALIST/CONSULTANT	\$165
ENGINEERING/SCIENTIST PROFESSIONAL II	\$148
ENGINEERING DESIGNER/PROFESSIONAL III	\$136
ENGINEERING TECHNICIAN I	\$121
ENGINEERING TECHNICIAN II	\$105
ENGINEERING TECHNICIAN III	\$102
ENGINEERING TECHNICIAN IV	\$85
ENGINEERING TECHNICIAN V	\$77
♦ Automobile at 60 cents per mile	♦ GIS computer at 20 dollars per hour.
♦ Four-wheel drive/Pick-up truck vehicle at 70 cents per mile	♦ Info water® at 20 dollars per hour.
♦ AutoCAD computer at 15 dollars per hour.	♦ Civil 3D at 25 dollars per hour.
<i>Ten percent (10%) will be added to all reimbursable expenses to cover administration for special consultants, independent laboratory tests, direct printing costs, telephone, supplies, lodging and subsistence, and all in-house computer, auto, postage, fax, and travel.</i>	

**TERMS OF PAYMENT:** It is agreed that this account will be billed every month. Unless otherwise approved by the Company, payment is due upon receipt of the invoice. Mail payment to the main office of the Company at 2490 West 26th Avenue, Suite 100A, Denver, Colorado 80211. If payment is not received, the client agrees to pay interest at the rate of 1.5 percent per month on the outstanding balance. This does not constitute a credit arrangement, and in no case, shall the minimum payment be less than 33 percent of the amount billed. If the account is placed with an attorney for collection, the client agrees to pay court costs and reasonable attorney fees. The liability of Wright Water Engineers, Inc. for losses or damages arising out of the errors, omissions, or negligence of Wright Water Engineers, Inc. while providing professional services shall be limited to the total fee due to Wright Water Engineers, Inc. pursuant to this agreement.



**Wright Water Engineers, Inc.**

2490 W. 26th Ave., Ste. 100A  
Denver, CO 80211  
(303) 480-1700 TEL  
(303) 480-1020 FAX

www.wrightwater.com  
e-mail: kthrush@wrightwater.com

**Please remit payments to Wright Water Engineers, Inc. via EFT:**

Business Name: Wright Water Engineers, Inc.

Address: 2490 W. 26<sup>th</sup> Ave., Suite 100A  
Denver, Colorado 80211

Company Contact: Kristine Thrush, Controller

Phone Number: (303) 480-1700

Email: [kthrush@wrightwater.com](mailto:kthrush@wrightwater.com)

Bank Name: Wells Fargo Bank N.A.  
1740 Broadway  
Denver, CO 80274

Routing Number: 121000248

Checking Account: 4159684521

Swift Code: WFBIUS6S

DUNS Number: 08-147-4041

Tax ID Number: 84-0602877

Remittance Advice  
Email: kthrush@wrightwater.com

Thank you,

A handwritten signature in black ink that reads 'Kristine D. Thrush'.

Kristine Thrush  
Controller

April 7, 2023

Mr. Scott Schreiber, P.E.  
Wright Water Engineers, Inc.  
818 Colorado Avenue, Suite 307  
Glenwood Springs, CO 81601

Subject: Proposed Geotechnical Study  
Gunnison Flood Control Levee  
Gunnison, Colorado  
Proposal Agreement No. SC230402

Dear Mr. Schreiber:

CMT Technical Services - Colorado (CMT) is pleased to submit this proposal to Wright Water Engineers, Inc. (Client) for a geotechnical study at the site of the Gunnison flood control levee located west of the western end of Gunnison County Road 15 and east of the Gunnison River in Gunnison, Colorado. CMT understands that the levee is about 700 feet in length and up to 5 feet in height. It was constructed during a flood event in 1984. The current levee has adequate freeboard to resist a 100-year flood event. Due to the unknown nature of the construction, the adequacy of the levee to resist a flood event is in question. The goal of this study is to evaluate the stability of the levee and levee foundation.

CMT visited the site on April 6, 2023. The site was covered with snow but appeared to be accessible for a smaller truck mounted drill rig (Simco). CMT is conducting a study for the City of Gunnison, north of the levee. CMT will utilize that data for this study. CMT assumes that the Client will provide access to private property, as necessary.

CMT proposes to:

- 1) Contact the Utility Notification Center of Colorado (UNCC-811) to have publicly owned utilities identified and marked prior to performing any drilling or excavation on the property. The Client/Owner is responsible for having the locations of any private utilities or subterranean structures identified and clearly marked prior to CMT initiating drilling services. Privately owned utilities or facilities are typically not marked or located by UNCC-811 and usually require a private locate service. CMT can retain a subcontractor to provide private locate services, if requested by Client. Fees for private locate services are not included in this proposal.
- 2) Drill six borings; five along the crest of the embankment and one south of the embankment. Borings will be drilled to depths of about 15 to 20 feet below the existing ground surface, or to refusal, whichever occurs first. This proposal is based on the site being accessible by a standard truck mounted, rubber tired drill rig, equipped with continuous flight, solid stem auger. In the event site access or difficult drilling requires use of a different rig or drilling equipment, additional costs will apply.
- 3) Perform penetration resistance tests on the in-place soil during drilling to help identify pertinent material layers and obtain samples of the material encountered.
- 4) Check for the presence of groundwater in the borings during drilling and once within 10

**Colorado Regional Office: 7108 South Alton Way, Building B • Centennial, CO 80112**

**Arizona • Colorado • Idaho • Texas • Utah**

**Phone 303-220-0300 • [www.cesareinc.com](http://www.cesareinc.com)**



- days after drilling.
- 5) Backfill the borings with cuttings/spoils obtained from the borings and/or other suitable material, as determined by CMT, upon completion of the last groundwater level check.
  - 6) Conduct laboratory testing to classify and characterize the soil/bedrock material encountered in the borings. Testing may include grain size distribution, plasticity, natural moisture content and density, strength testing, and moisture/density relationship (Proctor) tests.
  - 7) Present interim data verbally as the field and laboratory study progresses, if requested.
  - 8) Analyze and evaluate the field and laboratory data and present results of CMT's study in an engineering report that will include:
    - a) A site plan showing the existing site and boring locations;
    - b) Summary logs of the borings showing soil types encountered, locations and types of samples obtained, results of penetration tests performed, and groundwater levels, if encountered;
    - c) Laboratory test results in graphic and tabular form;
    - d) Descriptions of existing site conditions;
    - e) Conduct stability analysis of the levee during and post flood event; and
    - f) Provide recommendations of stabilizing the levee, if necessary.
  - 9) Submit the geotechnical study report in electronic format (pdf) signed by a Colorado registered professional engineer upon completion of these services. Printed copies will not be provided unless specifically requested prior to report preparation. Additional fees will apply if printed copies are requested.

CMT will perform the proposed services on a time and materials basis. Fees to provide the services described are estimated to be about \$11,500.

### **ADDITIONAL SERVICES**

CMT anticipates that some clarification/discussion with the Client and/or other members of Client's design team will be needed after submittal of CMT's report. CMT strongly encourages this collaboration and 1 hour of post report consultation time is included in the estimated fee stated herein. Otherwise, Client agrees to compensate CMT for additional consultation or services provided on a time and materials basis, according to CMT's current standard schedule of fees.

The proposed services will require driving a drilling rig over the existing ground surface possibly causing rutting or damage to the ground surface and/or existing vegetation. This proposal does not cover the costs for repair of such damage, should it occur. If the Client/Owner requires and requests that such damage be repaired, CMT will submit a separate proposal for the cost of conducting the requested repair.

Samples collected and subjected to testing, if any, will be disposed of after testing is completed. Samples not subjected to testing, if any, will be disposed of 30 days after submittal of the report for which the samples were collected.

**TERMS OF AGREEMENT**

CMT shall perform its services proposed above, subject to these terms of agreement (Agreement), in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions in the location of the project. No warranty or guarantee, either expressed or implied, is made or intended in our proposals, contracts, or reports.

The Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by CMT and that site and material conditions may vary. The data, tests, observations, interpretations, and recommendations made by CMT are, therefore, based solely on the information available and obtained by CMT. CMT will be responsible for those data, interpretations, and recommendations as indicated above, but shall not be responsible for the interpretations by others of the information developed. CMT is not responsible for knowledge of previous studies on the subject property unless they are made available to CMT and their review made part of this Agreement.

In performing services under this Agreement, CMT shall be entitled to rely upon the accuracy and completeness of reports, plans, specifications, and recommendations prepared by other consultants retained by the Client and CMT shall not be held liable for any actions, allegations, claims, or damages resulting from errors or omissions as a result of such reliance.

In the event the Client presents a claim against CMT at law or otherwise, for any alleged error, omission, or other act arising out of the performance of our professional services; and the Client fails to prove such claim upon final adjudication, the Client shall pay all costs incurred by CMT in defending itself against the claim, including but not limited to personnel-related costs, attorney's fees, court costs, and other claim-related expenses.

**INVOICES**

Invoices will be submitted monthly and on completion of services and are payable on receipt unless other arrangements have been made. CMT reserves the right to apply an interest charge of 1.5% per month to unpaid balances commencing thirty (30) days from the date of invoice and/or to cease service on any continuing project where invoices are more than sixty (60) days past due. Attorney's fees and other costs incurred in collecting delinquent amounts shall be paid by the Client.

**PROPOSALS**

Written technical proposals and engineering/consulting fee estimates are provided on request. Technical proposals and fee estimates are valid for sixty (60) days from the date of the proposal, after which they are subject to review by CMT. A revised proposal and fee estimate may be submitted.

**RIGHT-OF-ENTRY**

Client will provide for right-of-entry of CMT and all necessary equipment to complete the proposed services. While CMT will take reasonable precautions to minimize damage to the project property, it is understood by Client that in the normal course of work, some damage may occur, and unless otherwise stated in CMT's scope, the correction of which is not part of this Agreement.

**UTILITIES**

CMT will contact UNCC-811 prior to conducting onsite studies, as described in the scope of services. Client is responsible for designating/marketing the location of all other onsite utilities or subterranean structures not located by UNCC-811 prior to the commencement of CMT's services. Client agrees to indemnify and hold CMT and CMT's subcontractors harmless for damage to any utilities or subterranean structures (irrigation lines, telephone wires, pipes, tanks, etc.) whose locations are not marked or are not clearly marked or are not marked accurately in the field prior to CMT's arrival onsite.

If there are no private onsite utilities or subterranean structures in the locations where subsurface exploration is planned, Client shall provide CMT a written declaration that the planned exploration areas are clear of private utilities or subterranean structures.

**JOBSITE SAFETY**

Neither the professional activities of CMT, nor the presence of CMT or its employees, and/or subconsultants at the project site, shall relieve the Owner or Owner's representatives of its obligations, duties, and responsibilities with any health and/or safety precautions required by any regulatory agencies. CMT and its personnel have no authority to exercise any control over any other contractor, consultant, or their employees in connection with their work or any health and/or safety programs or procedures. The Client agrees that other contractors or consultants shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's contract with other contractors or consultants.

**OWNERSHIP OF DOCUMENTS**

Unless otherwise agreed in writing, all documents and information prepared by CMT in connection with the performance of its services, including, but not limited to, CMT's reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data, and other similar documents (collectively "Documents") are and shall remain the property of CMT. CMT has the right, in its sole discretion, to dispose of or retain the Documents. The Documents may be used by Client only in connection with completion of the subject project.

Upon receipt of payment in full, CMT grants to Client a non-exclusive license to use the Documents in constructing, maintaining, or renovating the subject project. Client agrees not to alter the Documents, use the Documents for any other project, or distribute the Documents to any third party. To the maximum extent permitted by law, Client shall defend, indemnify, and hold CMT harmless against all claims arising out of the unauthorized alteration, distribution, or reuse of CMT's Documents. Client shall not assign and/or transfer, directly or indirectly, in whole or in part, the Documents to any third party without CMT's prior review and written consent.

**INDEMNIFICATION**

The Client expressly agrees to indemnify and save harmless CMT, its officers, agents, employees, successors, and assigns against any suits, claims, demands, or actions, which are brought against CMT, its officers, agents, employees, successors, and assigns for or as the result of any injuries or damages received or sustained by any person, firm, or corporation; or persons, firms, or corporations,

resulting from the Client's negligent acts, errors, or omissions and those of their contractors, subcontractors, consultants, or anyone for whom the Client is legally liable, and arising from the project that is subject to this Agreement. CMT is not obligated to indemnify the Client in any manner from the Client's own negligence.

CMT's services in connection with this Agreement shall in no way subject the Consultant's individual employees, officers, or directors to any personal legal exposure for any services associated with this project.

## **MEDIATION**

In an effort to resolve any conflicts that arise from the services of this Agreement, the Client and CMT agree that all disputes between them arising out of or relating to this Agreement shall first be submitted to non-binding mediation, unless the parties otherwise mutually agree in writing.

## **INSURANCE**

CMT has coverage under public liability, property damage, and professional liability insurance policies as CMT deems to be adequate. Certificates for such policies of insurance shall be provided to Client upon written request.

## **LIMITATION OF LIABILITY**

To the maximum extent permitted by law, the Client agrees to limit CMT's total aggregate liability to Client and others for all injuries, claims, losses, damages, and expenses (including costs, expenses, attorney fees, and interest) arising out of CMT's services to the sum of \$50,000 or CMT's fee for services rendered pursuant to this Agreement, whichever is less. This limitation shall apply, regardless of the nature of the claim made or the cause of action or legal theory pled or asserted.

Further, in the event of a claim, Client agrees that as its sole and exclusive remedy, any claim, demand, or suit shall be brought against CMT as a corporation only, and not against any of CMT's individual employees, engineers, agents, officers, directors, or shareholders.

## **ACCRUAL OF CLAIMS**

The parties agree that any claim or cause of action between them, including, but not limited to claims for contribution and indemnity, shall be deemed to have accrued, and the applicable statute of limitations and repose shall commence to run no later than the date of substantial completion of CMT's services under this Agreement. Substantial completion shall be deemed to occur no later than the date CMT signs a lien release for payment, or if no lien release is required, when CMT issues its final invoice for services that CMT has completed under this Agreement.

## **WAIVER OF CONSEQUENTIAL DAMAGES**

Client and CMT waive claims against each other for consequential, incidental, indirect, special, exemplary, or punitive damages arising out of CMT's services. This mutual waiver includes, but is not limited to, claims for loss of use, product, rent, income, profit, financing, business, and reputation; for delay damages of any kind; for lost management and labor productivity; for lost opportunity to complete other projects; and for increased construction and financing costs. This waiver extends,

without limitation, to all consequential damages due to either party's termination under this Agreement.

## **TERMINATION**

Either party may terminate this Agreement for convenience and without cause upon giving the other party not less than seven (7) calendar days' written notice. In the event of such termination, the Client shall, within fifteen (15) calendar days, pay CMT for all services rendered and all reimbursable costs incurred by CMT up to the date of termination, in accordance with the payment provisions of this Agreement.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement, including Client's failure to pay CMT's invoices;
- Assignment of this Agreement or transfer of the project by either party to any other entity without the prior written consent of the other party;
- Suspension of the project or CMT's services by the Client for more than ninety (90) calendar days, consecutive, or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the scope of services or the nature of the project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of termination that is not the fault of CMT, the Client shall pay CMT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by CMT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, and all other expenses directly resulting from the termination.

## **ASSIGNMENT AND TRANSFER**

Neither party may assign and/or transfer, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party.

## **THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or CMT. CMT's professional services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against CMT because of this Agreement or the performance or nonperformance of services hereunder.

## **NON-SOLICITATION OF EMPLOYEES**

Parties to this Agreement shall not either directly or indirectly solicit or hire the other party's employees during the term of this Agreement.

## **HAZARDOUS MATERIALS**

The term "hazardous materials" means any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment or human health in any way whatsoever, including but not limited to those substances defined, designated, or listed in any federal, state, or local law, regulation, or ordinance concerning hazardous wastes, toxic substances, or pollution.

Client agrees to notify CMT about any known or suspected environmental conditions or hazardous materials that could impact the proposed scope of services. CMT agrees to notify the Client if CMT encounters any known or suspected hazardous materials. Should any known or suspected hazardous materials be discovered in the course of the performance of the services under this Agreement, such discovery shall constitute a changed condition. CMT's scope of services and fee schedule will require amendment prior to proceeding or the Agreement may be terminated. Should the discovery of any known or suspected hazardous material require CMT to take immediate measures to protect health and safety, Client agrees to compensate CMT for all costs incidental to taking such measures and for any equipment or replacement required. Client agrees to make any disclosure required by law to appropriate governmental agencies. Furthermore, Client agrees to defend, indemnify, and hold CMT harmless from any and all liability arising from discovery by anyone of any known or suspected hazardous materials.

## **SEVERABILITY**

Any provision of this Agreement later held to be unenforceable, void, or voidable, in litigation proceedings, shall be stricken and all remaining provisions shall continue in full force and effect.

## **APPLICABLE LAW**

The law of the State of Colorado shall govern the validity of this Agreement, including its interpretation and performance.

## **ENTIRE AGREEMENT**

This document shall be the entire Agreement and shall supersede any other Agreement between Client and CMT relating to the subject matter thereof. In case of a conflict or inconsistency between this Agreement and any other contract documents, this Agreement shall control. Notwithstanding any other provision in this Agreement, in the event CMT begins performance of the activities addressed by this Agreement, this Agreement shall be deemed to be in effect and enforceable, regardless of whether either party has signed this Agreement.

Please sign and return this Proposal Agreement. By affixing your signature to this Proposal Agreement, you attest that you have lawful authority to represent and act on behalf of the Client entity. Thank you for considering CMT for these services.

Sincerely,  
CMT TECHNICAL SERVICES - COLORADO



Darin R. Duran, P.E.  
Southwest Colorado Office Manager/Senior Principal - Colorado

DRD/ksm

Attachment: Schedule of Fees

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Legal property description \_\_\_\_\_

Invoicing email address \_\_\_\_\_

**SCHEDULE OF FEES <sup>(1)</sup>**

Senior Principal .....	\$215/hour
Principal .....	\$193/hour
Senior Consultant.....	\$176/hour
Senior Project Engineer or Senior Project Geologist .....	\$153/hour
Senior Project Manager.....	\$153/hour
Project Engineer or Project Geologist.....	\$136/hour
Project Manager .....	\$136/hour
Staff Engineer or Staff Geologist .....	\$119/hour
Special Inspector.....	\$96/hour
Field Engineer .....	\$91/hour
Master Technician .....	\$91/hour
Engineering Technician.....	\$77/hour
Technical Support .....	\$63/hour
Computerized Drafting.....	\$91/hour
Drone Services .....	Quoted upon request
MIT-SCAN2 (Dowel and Tie Bar) Scanning .....	Quoted upon request
Foundation Construction Observations (Excavation/Open Hole, Footing, Reinforcing Steel, Perimeter Drain, Void, Dampproofing, Waterproofing) .....	Quoted upon request
Concrete Maturity Data Loggers .....	\$80/each
Coring Operations .....	\$108/hour
Expenses and Outside Services .....	At cost + 13%
Mileage.....	At current Federal rate
Equipment Rental.....	Quoted upon request
Overtime Premium <sup>(2)</sup> .....	1.35 x rate
CMT Technical Services - Colorado Holiday Rate <sup>(3)</sup> .....	2.0 x rate
Night Shift Premium (6 PM to 6 AM) .....	Rate + \$5/hour

<sup>(1)</sup> Payment is due within 30 days of CMT Technical Services - Colorado's (CMT) invoice date. CMT reserves the right to apply an interest charge of 1.5% per month to unpaid balances commencing 30 days from the date of invoice and/or to cease service on any project where invoices are more than 60 days past due and/or to not issue final documents for projects where invoices are more than 60 days past due.

<sup>(2)</sup> Overtime Premium applies to hours exceeding 8 hours per day or 40 hours per week charged to a single project and any hours worked on weekends.

<sup>(3)</sup> CMT' holidays are New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day.

Fee adjustments, typically 3% to 5%, reviewed quarterly, usually determined annually.



## CORE SERVICES

GEOTECHNICAL ENGINEERING AND DESIGN	ENGINEERING GEOLOGY AND GEOLOGIC HAZARDS
<ul style="list-style-type: none"> <li>Drop structures and bank erosion</li> <li>Earth and rock fill</li> <li>Earth/rock fill dams and hydraulic structures</li> <li>Excavation evaluation and shoring</li> <li>Groundwater and seepage analysis</li> <li>Pavement system design and rehabilitation</li> <li>Pipelines</li> <li>Shallow and deep foundations</li> <li>Soil and rock slope engineering</li> <li>Soil corrosivity studies</li> <li>Soil stabilization and modifications</li> <li>Subexcavations</li> <li>Subsurface drainage design</li> </ul>	<ul style="list-style-type: none"> <li>Aggregate resources evaluation</li> <li>Detailed geologic mapping</li> <li>Excavation studies</li> <li>Geologic hazards assessments</li> <li>Geophysical assessments</li> <li>Rock joint studies and kinematic analysis</li> <li>Rockfall evaluation</li> <li>Slope stability analysis</li> <li>Soil solubility studies</li> </ul>
SUBSURFACE EVALUATIONS	ACCREDITED LABORATORY FACILITIES
<ul style="list-style-type: none"> <li>Becker and ODEX drilling</li> <li>Exploratory pit and excavation logging</li> <li>Geophysical assessments</li> <li>Packer testing (hydraulic conductivity)</li> <li>Piezometer and inclinometer installation and monitoring</li> <li>Pressuremeter/in situ testing</li> <li>Rock coring</li> <li>Rotary drilling and auger boring</li> </ul>	<ul style="list-style-type: none"> <li>Aggregate tests</li> <li>Concrete tests</li> <li>Masonry tests</li> <li>Mixture designs (concrete, asphalt, soil, and base)</li> <li>Soil stabilization tests</li> <li>Soil tests</li> </ul>
CONSTRUCTION OBSERVATION AND MATERIALS TESTING	MISCELLANEOUS
<ul style="list-style-type: none"> <li>Compaction test sections</li> <li>Concrete floor moisture barrier and relative humidity (RH)</li> <li>Fill, subgrade, and bases testing</li> <li>Floor flatness and levelness</li> <li>National Ready Mix Concrete Association (NRMCA) concrete plant inspections</li> <li>Piers and piling</li> <li>Precast and post-tensioned concrete</li> <li>Production and field testing of asphalt paving material (APM)</li> <li>Production and field testing of concrete material</li> <li>Quality assurance/quality control</li> <li>Reinforcing steel and concrete embeds</li> <li>Rock bolts, soil nails, and ground anchors</li> <li>Stabilized soil</li> <li>Structural masonry and masonry elements</li> </ul>	<ul style="list-style-type: none"> <li>Coring operations (asphalt paving material and concrete)</li> <li>Drone applications</li> <li>Equipment rental</li> <li>Lightweight deflectometer</li> <li>Special sample preparation, process, or procedure</li> </ul>
FORENSIC EVALUATIONS	VALUE ADDED BY VALUE ENGINEERING
<ul style="list-style-type: none"> <li>Arbitration, deposition, and trial testimony</li> <li>Claim evaluations</li> <li>Data analysis and summary reports</li> <li>Expert witness and consultation</li> <li>Site condition review and photograph documentation</li> </ul>	<ul style="list-style-type: none"> <li>Design of asphalt and concrete mixtures using recycled constituents.</li> <li>Designing or modifying pavement sections to reduce cost, while still meeting the structural loading demands.</li> <li>Our relationships with material producers and intimate knowledge of the material they provide gives Cesare the ability to recommend products that may potentially reduce costs through direct savings on material or reduction in construction time and effort.</li> <li>Recommendation of construction methods to improve efficiency and effectiveness for compaction of different types of soil and asphalt.</li> <li>Substituting imported material with native material modified to meet the required specifications or intent of design.</li> </ul>

**Centennial, Colorado**  
7108 S Alton Way, Bldg B  
Centennial, CO 80112

**Frederick, Colorado**  
3772 Eureka Way, Unit A  
Frederick, CO 80516

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365 Warren Avenue,  
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**Mailing:**  
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Poncha Springs, CO

**Mailing:**  
PO Box 1348  
Poncha Springs, CO 81242

**Phone 303-220-0300**  
**Fax 303-220-0442**



Monday, April 17<sup>th</sup>, 2023

To:

Wright Water Engineers, Inc  
Attn: Scott Schreiber, P.E.

Re: Gunnison Levee Project

The Survey Department at SGM would like to thank you for this opportunity to provide you with this survey proposal for an Existing Conditions and Topographic Mapping of the Levee site adjacent to the Gunnison River located the NW Quarter of Section 35. Per our conversation, it is our understanding that the scope of desired survey work is as follows:

Scope of Survey Work

Existing Conditions/Topographic Mapping

SGM will provide existing Conditions and Topographic mapping of the Levee Structure as defined by Wright Water Engineering. The mapping corridor will be 100' in width centered on the existing Levee structure and extend from the headage structure located at the ditch intake on the west side of the Levee and the Powerlines on the East side of the Levee. All pipe inverts and flowline elevations will be included on the finished drawings. Topography will be expressed in 1' contour intervals. The finished drawing will be State Plane Central Coordinate system and all vertical information will be relative the NAVD88 vertical datum.

SGM can provide this mapping for a fee of **\$3,927.00**

Parcel Boundary Work

SGM will survey the parcels to the extent to which the East-West boundary line (also being the North line of the SE1/4NW1/4 of Section 35) can be marked in the field and shown on the finished drawings.

SGM can provide this boundary work for a fee of **\$2,696.00**

Legal Description and Parcel Exhibit

SGM will prepare a written Legal Description and accompanying Legal Exhibit to describe and depict the area around the Levee. The exhibit would be on suitable to supplement a potential Legal Agreement such as an Easement.

SGM can provide the Legal Description and Exhibit for a fee of **\$1,340.00**

Deliverables to include PDF and CAD copies of the survey drawing.

Thank you for the opportunity to provide you with this proposal. If you have any questions, concerns, or would like to discuss this scope of work further, please don't hesitate to get a hold of me.

Thank you,



Erik Bjornstad, PLS



**To:** City Council  
**From:** Cody Tusing - City Engineer  
**Date:** May 23, 2023  
**Subject:** Stormwater Engineering & Master Planning Services

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### **Purpose:**

To award a contract for engineering and master planning for the City Stormwater Master Plan. After accepting proposals from qualified engineering firms, reviews of proposals and staff, interviews, and reference checks; the public works department would like to award the engineering services contract to HDR Engineering, Inc.

### **Background:**

The 2023 City Budget includes \$150,000 CIP for Phase One of the City Stormwater Master Plan, which is found in 01-4031-4330. An additional \$100,000 is expected in 2024 for the revisions of the City Stormwater Management Manual, following results and recommendations from the Stormwater Master Plan

After receiving five proposals from engineering firms, two were selected as best qualified based on staff and experience. Interviews were conducted before selecting the best qualified engineering firm. After selection the scope of services and costs were solidified and negotiated. HDR Engineering, Inc. has five tasks included in their scope of work as listed below:

- |  |                 |
|--|-----------------|
| • <b>Task Order No 1.0:</b> Project Management.                | \$ 25,887       |
| • <b>Task Order No 1.1:</b> Storm Sewer Feasibility            | \$ 35,940       |
| • <b>Task Order No 1.2:</b> Survey                             | \$ 2,740        |
| • <b>Task Order No 1.3:</b> Stormwater Drainage Analysis       | \$ 82,460       |
| • <b><u>Task Order No 2.0:</u></b> Stormwater Manual Rev Scope | <u>\$ 2,640</u> |
| • <b>Total Costs:</b>  | \$ 149,667      |

### **Council's Strategic Criteria:**

- A. Public safety & Community Resiliency:** Stormwater impacts everyone in the City in existing and future developments. As the City grows impacts from Stormwater can create hazards impacting resident's safety and property. The master plan and

subsequent Stormwater management manual will provide roadmaps for the City to implement Stormwater management in the City and in growing areas.

**B. Public engagement which fosters racial and cultural equity, inclusivity, and diversity:**

Drainage is a regional phenomenon that does not respect the boundaries between government jurisdictions, property boundaries, or adjacent land uses; and, can impact multiple areas in the City during a single precipitation event. Areas in town that may be prone to flooding can be identified during this study, and emergency services will be made aware of areas in the City with the highest impacts from Stormwater. Additionally the Stormwater Master Plan be lead into revisions and updates to the City Stormwater Management Manual, which is required to be followed by Land Development Code for all developments in the City; thus the impacts of master planning for Stormwater are far reaching within the City.

**C. Achieving the City's environmental sustainability goals:** As the City grows it will eventually be required to adhere to the EPA requirements of a Municipal Separate Storm Sewer System (MS4) permitting requirements and monitoring. A portion of the City drains into Tomichi Creek, which is already listed on the State of Colorado 303(d) list of impaired water ways. The Stormwater Master Plan includes developing a road map to MS4 compliance as the City grows, and allows for smart growth for when we eventually are required to implement a MS4 Stormwater system.

**Action(s) Requested of Council –**

- Staff is requesting the City Council authorize the City Manager to execute a contract for professional engineering services with HDR Engineering, Inc. for \$149,667 as budgeted.

**Appendix A:** Scope of Work for engineering services with HDR Engineering, Inc.

City of Gunnison Stormwater Master Plan	HDR ENGINEERING														Total Fee
	Project Principal (Stillman)	Senior Technical Advisor, QA/QC (Thornton)	Project Manager (Acosta)	Senior Meteorologist (McMahon)	Meteorologist (Clements)	Senior Engineer (Christopherson)	Project Engineer (Keenan)	Permitting Lead (Blandford)	Senior Project Accountant (Kayser)	Admin Assistant (Cresswell)	Hours	Labor	Total Expenses	HDR Fee	
	\$ 280	\$ 280	\$ 220	\$ 220	\$ 165	\$ 185	\$ 130	\$ 220	\$ 130	\$ 110					
Task Description															
<b>Task 0. Management, Coordination, Accounting, and QC</b>															
0.1 Project Management, Accounting, and QA/QC (14 months)	2	8	14						21	4	49	\$ 9,050	\$ -	\$ 9,050	\$ 9,050
0.2 Kickoff Meeting/Site Visit (In-Person)			12			12					24	\$ 4,860	\$ 939	\$ 5,799	\$ 5,799
0.3 Planning Objectives, Study Area Characterization, Master Plan Framework Development Meeting (Virtual)			2			2	2				6	\$ 1,070	\$ -	\$ 1,070	\$ 1,070
0.4 Problem Identification, Characterization and Improvements Recommendations (In-Person)			8			8	2				18	\$ 3,500	\$ 939	\$ 4,439	\$ 4,439
0.5 Stormwater Capital Improvement Plan Meeting (Virtual)			2			2	2				6	\$ 1,070	\$ -	\$ 1,070	\$ 1,070
0.6 Stormwater Management Manual Revision Scoping Meeting (Virtual)			2			2		2			6	\$ 1,250	\$ -	\$ 1,250	\$ 1,250
0.7 MS4 Roadmap Scoping Meeting (Combined with 0.11)											0	\$ -	\$ -	\$ -	\$ -
0.8 Additional Progress Meetings (Virtual) (Assuming 6)			6			6	6				18	\$ 3,210	\$ -	\$ 3,210	\$ 3,210
Sub-total	2	8	46	0	0	32	12	2	21	4	127	\$ 24,010	\$ 1,877	\$ 25,887	\$ 25,887
<b>Task 1, Phase 1: Sewer Relocation Feasibility Study Scope</b>															
1.1.1 Define Planning Objectives			4			16	24				44	\$ 6,960	\$ -	\$ 6,960	\$ 6,960
1.1.2 Data Collection and Review			4			24	80				108	\$ 15,720	\$ -	\$ 15,720	\$ 15,720
1.1.3 Study Area Characterization			4			12	44				60	\$ 8,820	\$ -	\$ 8,820	\$ 8,820
1.1.4 Master Plan Framework Development			4			8	16				28	\$ 4,440	\$ -	\$ 4,440	\$ 4,440
Sub-total	0	0	16	0	0	60	164	0	0	0	240	\$ 35,940	\$ -	\$ 35,940	\$ 35,940
<b>Task 1, Phase 2: Suvey</b>															
1.2.1 Field Inventory of Irrigation System (Review of City gathered data and site visit data)			2			4	12				18	\$ 2,740	\$ -	\$ 2,740	\$ 2,740
Sub-total	0	0	2	0	0	4	12	0	0	0	18	\$ 2,740	\$ -	\$ 2,740	\$ 2,740
<b>Task 1, Phase 3: Stormwater Drainage Analysis</b>															
1.3.1 H&H Model Development (GIS-based)			2			40	160				202	\$ 28,640	\$ -	\$ 28,640	\$ 28,640
1.3.2 Problem Identification, Characterization and Improvements Recommendations			4			36	96				136	\$ 20,020	\$ -	\$ 20,020	\$ 20,020
1.3.3 Stormwater Capital Improvement Plan			2			40	96				138	\$ 20,320	\$ -	\$ 20,320	\$ 20,320
1.3.4 Stormwater Drainage Master Plan Report			4			40	40				84	\$ 13,480	\$ -	\$ 13,480	\$ 13,480
Sub-total	0	0	12	0	0	156	392	0	0	0	560	\$ 82,460	\$ -	\$ 82,460	\$ 82,460
<b>Task 2: Stormwater Management Manual Revision Scoping</b>															
2.1 Stormwater Management Manual Revision Scoping			4	2							6	\$ 1,320	\$ -	\$ 1,320	\$ 1,320
2.1 MS4 Roadmap scoping			2					4			6	\$ 1,320	\$ -	\$ 1,320	\$ 1,320
Sub-total	0	0	6	2	0	0	0	4	0	0	12	\$ 2,640	\$ -	\$ 2,640	\$ 2,640
<b>Hours</b>	2	8	82	2	0	252	580	6	21	4	957				
<b>Fee Total</b>	\$560	\$2,240	\$18,040	\$440	\$0	\$46,620	\$75,400	\$1,320	\$2,730	\$440		\$ 147,790	\$ 1,877	\$ 149,667	\$ 149,667



**To:** City Council  
**From:** Erica Boucher  
**Date:** May 23, 2023  
**Re:** Timeline of Dates Related to the Coordinated Election

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**Purpose:** The purpose of this agenda item is to provide Council with an outline of key dates related to filling a forthcoming vacancy on Council as Councilmember Jim Miles shared his intention to resign from Council prior to his term expiration in December 2025.

**Background:** If any Councilmember resigns between May 23 and the November 7, Coordinated Election following actions shall occur as outlined in the *Gunnison Municipal Charter, Section 4.7, Filling Vacancies in Elective Offices*.

**Section 4.7 Filling Vacancies in Elective Offices:**

Any vacancy that occurs in the City Council less than ninety (90) days after a regular City election shall be filled by the appointment, by majority vote of remaining members of the Council, of that person, if that person is still qualified and accepts the appointment, who was runner-up in the last election after those elected, provided that person polled ten (10) per cent of the vote cast. Otherwise, Council may, in its discretion, appoint a successor to serve until the next regular City election, or call for a special election, at which such vacancy shall be filled as provided in Section [2.2](#) for any balance of the unexpired original term.

Any vacancy that occurs in the City council more than ninety (90) days before the next regular City election and more than ninety (90) days after the last regular City election shall be filled within thirty (30) days by a majority vote of the remaining members of the Council, said appointee to hold office until the Monday following the next regular City election at which election such vacancy shall be filled as provided in Section [2.2](#) for any balance of the unexpired original term.

Any vacancy that occurs in the City Council ninety (90) days or less before the next regular City election may not be filled.

With Councilor Miles' likely forthcoming resignation, Council has a few different options on how to proceed as outlined above in the Charter. Each option has cons and pros for Council to consider. If an appointment is not made, there will be four seats available on Council at the Coordinated Election. In the case of four individuals being elected to Council, terms would be assigned according to the Charter. The candidates who receive the top two number of votes will serve four-year terms and the next two candidates will receive two year terms.

**Important Dates:**

**Thursday, July 27:** Council 101, Informational meeting for citizens interested in running for City Council.

**Tuesday, July 25:** Council meeting to take formal action (via Resolution) to participate in the Coordinated Election. Formal action in writing must be received by the county clerk by Friday, July 28 at 5:00 p.m.

**Tuesday, August 8:** First day candidates can circulate and have a nomination petition signed by registered electors.

**Tuesday, August 8:** Council Meeting

**Wednesday, August 9:** 90 days before the next election. Appointment of a resigned councilmember can not be made. Seat remains vacant until filled at the Coordinated Election.

**Tuesday, August 22:** Council meeting to sign an IGA with the County to participate in the Coordinated Election.

**Monday, August 28:** Last day for candidates to circulate and have a nomination petition signed by registered electors. Nomination petitions shall be filled with the clerk no later than 5:00pm on this date.

**Tuesday, August 29:** Deadline for county clerk and the City of Gunnison to sign an IGA for the 2023 Coordinated Election.

**Tuesday, September 5:** Last day to file an affidavit of intent to run as a write-in candidate for a non-partisan coordinated election.

**Friday, September 8:** Last day for the designated election official from each political subdivision that intends to conduct an election to certify the ballot content and deliver to county clerk.

**Friday, September 22**

Last day to file pro/con comments pertaining to local ballot issues with the designated election official in order to be included in the ballot issue notice.

**Monday, September 25**

Last day for designated election official to deliver ballot issue notices to the County Clerk.

**Tuesday, November 7**

Election Day

**Action Requested of Council: No action requested of Council.**



## Schedule of Up-Coming Events: May, June, and July 2023

### May

- **Saturday, May 20, 9:00 am:** Hartman Rocks Clean-Up
- **Tuesday, May 23, 5:30 pm:** Council Meeting
- **Saturday, May 27 and Sunday, May 28:** Gunnison Growler Bike Races
- **Monday, May 29:** City Offices Closed for Memorial Day Holiday

### June

- **Saturday, June 3:** Outdoor Expo and Fishing Derby in Jorgensen Park
- **Saturday, June 10, 9:00 am:** First Farmers Market at IOOF Park
- **Tuesday, June 13, 5:30 pm:** Council Meeting
- **Thursday, June 15, 5:30 pm:** Immigrant Heritage Celebration and Community Potluck, Legion Park
- **Sunday, June 18, 6:00 pm:** First Sundays @ 6 Concert in Legion Park
- **Monday, June 26:** Start date for new City Manager Amanda Wilson. She plans to attend the CML Conference, June 25-28.
- **Tuesday, June 20, 5:30 pm:** Council Meeting

### July

- **Tuesday, July 4, 3:00 pm:** 4<sup>th</sup> of July Celebration, Jorgensen and Legion Parks
- **Tuesday, July 11, 5:30 pm:** Council Meeting
- **Thursday, July 20, 11:30 am:** City Fest, Jorgensen Ice Rink
- **Tuesday, July 25, 5:30 pm:** Council Meeting
- **Thursday, July 27, noon and 5:30 pm:** Council 101, Council Chambers

Request a date to schedule a retreat with City Manager Wilson to discuss strategic priorities.

Laserfiche Conference, May 31 and June 1. Mike Lee, Erica Boucher, and Ben Cowan are attending. Police Chief Keith Robinson will be acting City Manager.

CML Conference, June 25-28, 2023. Kathy Fogo, Councilor Jim Gelwicks, and in-coming City Manager Amanda Wilson are attending

### **Recently Awarded Grants:**

### **Reminders:**

If you are using a city-owned tablet or laptop, please remember to leave it on, but connected to the internet a few days a month so security updates made be completed to the device.





**To:** City Council  
**From:** Ben Cowan, City Manager  
**Date:** Friday, May 19, 2023  
**Subject:** City Manager Report

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## Updates

### Ditches Update

The main ditch needed repair work when it was found water was undermining the intact culvert near the paintbrush development. The repair work is curing, and Public Works hopes the ditches will be flowing by May 19.

### Tree Dump Closure

Due to staffing issues, the tree dump has to close on June 1, 2, 5 and 6.

### Parks and Recreations Updates

The xeriscape garden construction at 11<sup>th</sup>/Quartz is underway with grading and tree plantings.

Hartman's Rocks Cleanup is scheduled for May 20 at 9 am.

Dugout shelters at the Jorgensen Ball Fields are in place.

The water feature at IOOF Park will be turned on next week. The pop jets will be charged just before the Memorial Day weekend. Festival lighting will be added to the poles.

### OVRP Regional Leadership Meeting Postponed

The upcoming Regional Leadership Team meeting (originally planned for next Thursday, May 25th) is being moved to the morning of Thursday, June 29th – location TBD. This change is due to the passing of an immediate family member of one of the project leads.

The Housing Action Team will still meet next week on the 25th from 10:30-12:30. The other Action Teams are not meeting that day.

You can expect to have a draft final project document for review by mid-June with a request to provide comments and feedback in anticipation of the June 29th meeting.

## Council Follow-Up

### Community Solar

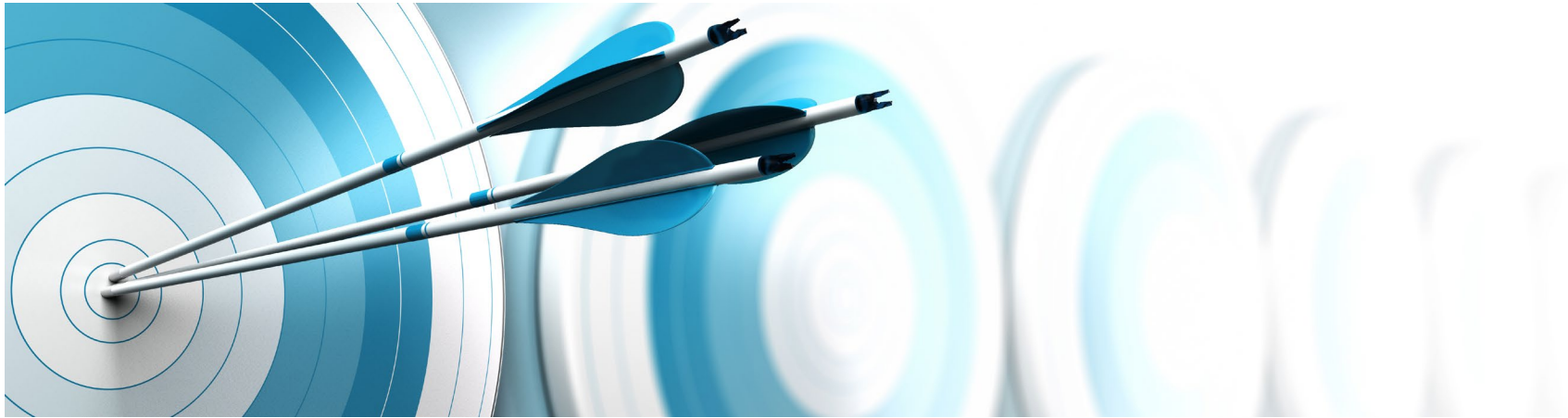
One Councilor is interested in working with MEAN to conduct a feasibility study to construct a solar array through a Power Purchase Agreement. Please let us know if this is something the Council as a whole would like staff to explore further.

Please let me know if you have any questions.

### Other

The City Manager may also have other updates to provide since the packet was completed and transmitted to the City Council.

## Council Strategic Plan Results Update



The following table is a summary of the progress to implement the 2022 Council Strategic Plan. The 2022 Strategic Plan can be found at this [link](#) in its entirety.

While a strategic plan provides a level of discipline for budgeting and management, short-term actions that support strategic initiatives can still occur allowing the City to be opportunistic if a strategy is not specifically listed in this plan. In addition, staff may propose different and/or amend strategies to be nimble to take advantage of future opportunities to achieve desired results. This Strategic Plan is intended to be a dynamic plan that is reviewed and updated at least every two years or more frequently if the need arises.

This section is intended to ensure focus in operations and budgeting remains focused on achievement of stated results for the betterment of the community.

### Legend

<b>Complete</b>
<b>Initiated/Underway</b>
<b>Not Yet Initiated</b>
<b>New Update</b>

## A. Infrastructure and Public Safety

The City's utilities and infrastructure (roads, water, electricity, and broadband) provide the physical foundation for supporting our economy and community. Historically, Gunnison has underfunded maintenance and capital replacement of infrastructure that may result in the loss of use of that infrastructure for our customers (i.e., the lights could go out/paved roads turn to gravel). In the future, utilities and critical infrastructure will efficiently and effectively support existing residences and businesses now and for the long-term. Infrastructure planning and implementation will encourage and support responsible residential and commercial growth, and community safety will factor into all community projects and investments.

Result	Strategy	Update/Next Steps
<p><b>Result A.1:</b> By December 31, 2022, the City of Gunnison will begin to implement a 10-year funding, operating, maintenance and replacement plan for water, electricity, solid waste, recycling and wastewater infrastructure, buildings, and facilities so that our utility customers will experience reliable, cost effective, and efficient service.</p>	<p>With new infrastructure investment, ensure that the City is achieving its environmental sustainability goals where practical and feasible.</p> <p><i>Lead: Public Works</i></p>	<p><b>Street Pavement Condition Analysis &amp; Street Program:</b> The City had a ballot question on the November 2022 budget to adequately fund road maintenance into the future. The proposed budget for 2022 included over \$2 million for street improvements. The Palisade paving project is now completed. The IMS study will be updated to reflect new priorities as a result of the ballot results with current pricing. A January 24 work session provided staff directives to develop an effective street maintenance plan given limited resources. A revised IMS plan was presented to the Council on April 11, 2023. Laser road surface testing will occur later this year.</p> <p><b>Water Treatment Plant:</b> Public Works has completed an update to the City's 2008 water master plan to evaluate current and anticipate future water distribution and treatment issues. A new surface water treatment plant is being planned over the next five years. This will provide additional redundancy for water delivery to Gunnison in an increasingly drier climate. The 2023 budget includes \$350,000 for water plant design work.</p> <p>JVA Consulting Engineers has been selected to design a new treatment plant to collect surface and well water to deliver safe and reliable water to residents and businesses. Grants from the Colorado Department of Health and Environment for \$310,000 will offset costs of preliminary design.</p> <p>Submission of the final Design report to the City by JVA is anticipated for June 20. Grant request via DOLA will begin this fall with a SRF loan application likely January 2024 to coincide with a 2024 construction season.</p> <p><b>Water Loss Study:</b> Public Works and the Finance Departments are working through a water loss audit for \$75,000 to identify the cause of unaccounted water including unbilled water. Partially funded by UGRWCD.</p> <p><b>Electrical Distribution Study and System Upgrades:</b> Public Works has conducted a citywide study to evaluate current and anticipate future electrical distribution demands on the system. The 2023 budget includes \$600,000 to improve the existing electrical infrastructure to be able to accept increased electrification of homes. This is a 5 year project.</p>

		<p><b>Sewer Pinch Points:</b> Via an engineering evaluation, undersized sewer mains have been identified that may impede capacity for economic and housing growth, especially Gunnison Rising (GR). Use of stimulus funds are planned for 2023 to upsize sewer systems in the southeast and southwest sections of town that are poised for housing growth. The total construction cost estimate projections have exceeded the allocated \$1,662,962 available utilizing State and Local Fiscal Recovery Funds (SLFRF). Costs estimates are being shared with GR for cost sharing opportunities. The planned CMAR approach will be replaced with a more conventional bid process to obtain competitive bids.</p> <p><b>Stormwater Management Plan:</b> The 2023 Budget includes an appropriation for \$150,000 to begin the survey and analysis work on a plan. An additional \$100,000 will likely be needed in a future budget year for plan development. <b>An award for the plan consultant is scheduled for May 23 2023.</b></p> <p><b>Irrigation Ditches:</b> Public Works has identified 22 underground pipe ditch locations that cross city streets and state highways that are substantially deteriorated or have completely failed. Staff is actively looking for grants to address this unfunded need.</p>
<p><b>Result A.2:</b> By 2025, the City will be able to determine the infrastructure needs and its ability to provide for those needs for Gunnison Rising, West Gunnison, and lands outside of the City, but in the City's Three Mile plan so that new outside demands of the City will not impair our residents' ability to use City utilities, infrastructure, and services.</p>	<p>By June 1, 2023, the City has completed a Three-Mile Plan with Gunnison County so that we can adequately plan for growth and required utility capacity in the future.</p> <p><i>Lead: Community Development</i></p>	<p>The Consultant team has been selected and work is underway. A multi-jurisdiction kick-off meeting took place including elected and appointed officials from the city and county and staff.</p>
	<p>By March 1, 2023, the City has completed, through a state-funded performance contract program, a review of all city buildings and has identified actions to enhance energy efficiency and/or use renewable energy.</p> <p><i>Lead: Finance</i></p>	<p>Now that the City has secured the primary grant from DOLA of \$749,520, the Energy Performance contract process is going well, and bids are going out this week with a deadline of February 3. Once bids are received and projected cost savings from avoided energy and capital costs are analyzed, we expect that to be in front of you at your February 28 meeting for consideration of proposed projects to move forward for approval by the State and ultimately construction.</p>

	<p>By June 1, 2023, the City will integrate into its development review process a means of modeling and identifying carrying capacity limitations with the City's utilities as it relates to new development.</p> <p><i>Lead: Public Works</i></p>	<p>As a matter of new site plan review policy, the city has taken the initiative to <b>implement</b> a more detailed review of potential impacts to limited sewer, water and electrical capacities caused by oversized service requests. Thus developments are now being required to substantiate service size requests that appear unrealistic for the type and level of service provided. The City will formalize this policy in the Land Development Code revisions, planned for 2023.</p>
<p><b>Result A.3:</b> By June 1, 2023, the City will develop a sustainable long-term funding plan to maintain City streets so that City Residents will experience safe City streets.</p>	<p>By May 1, 2022, retain the services of a communication consultant to support a road ballot initiative.</p> <p><i>Lead: City Manager</i></p>	<p>According to Council direction, this strategy is unnecessary and efforts will be directed by City staff.</p>
	<p>By June 1, 2022, implement a communication strategy to support a roads ballot initiative.</p> <p><i>Lead: City Manager</i></p>	<p>A draft schedule and communication strategy was presented at the February 28, 2023 Council work session.</p>
	<p>By June 1, 2022, develop a committee to support a ballot initiative separate from the City.</p> <p><i>Lead: City Manager</i></p>	<p>The current proposed schedule includes identification of Political Action Committee in late May or early June 2023.</p>
	<p>By October 31, 2023, through both public and private partnerships as applicable, propose a strategy to City officials for improving the competitive environment for asphalt so that competitive pricing can be realized for public street projects.</p> <p><i>Lead: Public Works</i></p>	<p>Initial investigation has occurred to assess the efficacy of purchasing and operating an asphalt plant, perhaps utilizing multi-jurisdictional collaboration.</p>

<p><b>Result A.4:</b> By June 1, 2025, City residents will experience a fully integrated fire service through the Gunnison County Fire Protect District that has adequate facilities, specifically a new fire station, to maintain or improve the City's ISO rating and provide improved response times for our residents when dispatched to emergencies in the City.</p>	<p>Support the Fire District in the process to consolidate the City of Gunnison into the Fire District.</p> <p><i>Lead: City Manager</i></p>	<p>This process has not yet been outlined. Following Council direction on whether the street initiative is restarting in 2023, this strategy may be depending on timing with initiatives on the ballot. The City Manager has reached out to the District to offer support. The District is currently developing specific plans for a station.</p>
	<p>Support the Fire District in refining the design for a new fire station.</p> <p><i>Lead: Community Development</i></p>	<p>The Gunnison County Fire Protection District is preparing an RFP for design work.</p>
<p><b>Result A.5:</b> By December 31, 2028, develop a sustainable long term funding policy for the Parks and Recreation Department.</p>	<p>Prior to sun-setting 75% of the 1% Recreation Fund in 2032, a strategy will need to be implemented to either dramatically reduce spending for recreation or to request voter permission to retain all or a portion of the sunseting Recreation tax. By evaluating this opportunity with the infrastructure needs in B.4, there may be creative strategies to fund multiple needs.</p> <p><i>Lead: Parks and Recreation</i></p>	<p>This strategy has begun with a "Rec and Roads" type ballot initiative in 2023.</p> <p>A collaborative strategy to address the street and recreation sunset funding issues concurrently is being developed and assessed.</p> <p>A charrette was held on April 24, 2023 to gather public input. A short debrief was held on April 25, 2023 with a Council-led discussion to determine direction at the May 23, 2023 meeting.</p>

## B. Economic Prosperity and Housing

The COVID 19 pandemic appears to be contributing to the ongoing trend of 2nd homeowners, retirees, and location neutral businesses and individuals moving to the Gunnison Valley, which is further increasing housing values and making it harder for Valley employees to find housing. This trend could be an opportunity to diversify our economy. The pandemic has further highlighted how the creation of a diverse economy that is less reliant on tourism will improve our community's economic resiliency in the future. Moving forward, the City of Gunnison will attract entrepreneurs and small businesses while being a destination for unique mountain town shopping and outdoor recreational experiences. Both current and future residents will find Gunnison an attractive place to call home because of its diverse affordable housing, vibrant Main Street, growing University, and easy access to public lands. Average median income in Gunnison will move closer to the State of Colorado's average median income. Both improving our local economy and providing affordable housing options will be evidenced by achieving the results below:

Result	Strategy	Update/Next Steps
<b>Result B.1:</b> By June 1, 2023, complete a long-term COVID 19 Recovery Plan in partnership with the One Valley Leadership Council and begin its implementation.	The One Valley Leadership Council (OVLC) will complete a long-term recovery plan and present that to the respective elected officials in the Gunnison Valley for approval prior to June 1, 2023.  <i>Lead: City Manager</i>	Elected officials participated in a June 8, 2022 kick-off for this project by discussing and providing direction on critical areas to focus on in this project. On October 5, 2022, the OVLC approved a project timeline and scope to complete a new recovery plan. On December 14, 2022, Community Builders worked through the Resiliency Roadmap with the OVLC in a retreat in Crested Butte. Elected and appointed officials participated in the Resiliency Roadmap retreat on at the Gunnison Library on March 2, 2023.



**Result B.2:** By December 31, 2025, 100 net new jobs paying >\$60,000/year will be created (Average of 20 jobs per year over \$60,000 should be generated).

Financially support the ICE Lab to help achieve this goal. The ICELab has a similar goal to create jobs paying more than \$60,000 per year by creating and attracting new businesses to the Gunnison Valley. This will include a marketing program to communicate to entrepreneurs that the Gunnison Valley is an attractive place to “live, learn, and earn.” Key elements of a marketing campaign should include emphasizing the following:

- Creation of affordable housing in the future.
- Highly livable community with great schools and an abundance of recreational amenities.
- Strong health care system.
- Safe and secure community.

This collaboration and communication is ongoing.

*Lead: City Manager*

The 2023 budget includes an appropriation of \$40,000. The contract has been signed and payment has been issued. An update from the IceLab occurred at the April 11, 2023 meeting with the below metrics.

Economic Development Metrics									
	Year	2019		2020		2021		2022	
Gunnison County	Cumulative Metrics	Goal	Actual	Goal	Actual	Goal	Actual	Goal	Actual
	Companies Recruited	1	1	2	2	3	4	4	4
	Jobs Created	5	5	12	22	20	33	30	43
	Jobs >\$50k/60k Created	1	3	3	6	5	10	8	15
	Revenue \$ Increase	\$200,000	\$847,000	\$700,000	\$1,144,971	\$1,500,000	\$1,633,426	\$2,500,000	\$2,811,027
	WCU Interns/Grads placed	2	5	4	13	7	19	11	23

<b>Result B.3:</b> By December 31, 2025, the residents of Gunnison and our Central Business District commercial owners will experience an increasingly thriving vibrant downtown resulting from a common vision for branding, marketing, presenting special event, and creating physical improvements to the Central Business District.	<p>The above-mentioned result will be achieved by defining a common vision and action plan for tourism in Gunnison and for the Gunnison Valley by June 1, 2023.</p> <p><i>Lead: City Manager</i></p>	<p>This strategy has not yet begun.</p>
	<p>By December 31, 2022, the City will facilitate a plan to identify special events and athletic events (hockey, softball, lacrosse etc.) to strategically improve lodging occupancy at times of the year when occupancy is low.</p> <p><i>Lead: City Manager</i></p>	<p>This strategy has not yet begun.</p>
	<p>By July 1, 2022, the City, in partnership with the ICELab, will award \$215,000 in REDI subgrants to support expansion or improvement of existing businesses that increase primary jobs.</p> <p><i>Lead: Finance Director</i></p>	<p>Grants were awarded for \$215,000 in May 2022. The deadline for awarded businesses to complete the approved scope of work is June 30, 2023.</p>
	<p>By December 31, 2023, the City will complete a streetscape plan for South Main to improve pedestrian safety for Main and Tomichi and to enhance South Main adjacent to the Art Center as an attractive event venue.</p> <p><i>Lead: Community Development</i></p>	<p>This strategy may be a good solution to increasing pedestrian and bike safety at this major intersection, by removing turning movements. The plan will be assessed during the street safety meetings. This is a long-term potential solution that will require much public input.</p>
	<p>By December 31, 2023, the City will complete the Ohio Ave multi-modal connection from Western to Main Street.</p> <p><i>Lead: Public Works</i></p>	<p>Only one bid was received in December 2022 and it was well above the allotted resources. The 2023 budget includes \$2,050,000 for this project, with funding coming from grants and contributions for \$1,896,750.</p> <p>Public Works is applying for two grants from the Federal Transportation Alternatives Program and the CDOT RAISE grant, which are due at the end of February. These grants are hoped to make the project feasible.</p>

		The project is being rebid in the spring of 2023 with à la carte alternate bids options allow portion of the project to be construction of funding is not sufficient.
	<p>By December 31, 2025, the City will work with Western to develop additional conferences and conventions that would increase lodging occupancy, particularly in the winter.</p> <p><i>Lead: City Manager</i></p>	This strategy has not yet begun.
	<p>By June 30, 2024, recommend a financial tool (such as Tax Increment Financing, Business Improvement District etc.) to the City Council after collaboration with the Chamber of Commerce, CBD Business community, and other taxing authorities as appropriate to pursue funding for physical improvements and programs to implement the recommendations in Gunnison Vibrancy Initiative Final Report.</p> <p><i>Lead: City Manager</i></p>	This strategy has not yet begun.
	<p>By December 31, 2024, develop a clear brand for Gunnison that can be utilized for marketing, wayfinding, and providing direction on the development of public and private amenities in Gunnison commercial areas.</p> <p><i>Lead: Community Development, Parks and Recreation</i></p>	This strategy has not yet begun.

	<p>By December 31, 2025, the City will have received International Dark Sky Association certification.</p> <p><i>Lead: City Clerk</i></p>	<p>\$690,000 is included in the 2023 budget to replace high-wattage and light pollution emitting ballfield lighting at Jorgensen Park.</p> <p>McKinstry, an Energy Service Company, is analyzing the City's downtown lighting to assess the cost and strategies to replace them with dark sky compliant lights. The current lights have dark-sky compliant fixtures but the globe diffusers render them non-dark-sky compliant.</p>
<p><b>Result B.4:</b> By December 31, 2025, 250 work force housing units will be added to the residential housing stock in City of Gunnison through public/private partnerships, incentives, policies, etc. Note: This result is more specifically defined the following specific targets:</p> <ul style="list-style-type: none"> <li>• 100 units or more are built and deed restricted for 80% Average Median Income</li> <li>• 125 units or more are built and deed restricted for 80%-200% Average Median Income</li> <li>• 25 units or more are built as part of an affordable deed</li> </ul>	<p>By December 31, 2022, deliver 42 housing units to buyers at Lazy K.</p> <p><i>Lead: City Manager</i></p>	<p>This project is substantially complete. The construction of 30 units has been completed. All but four 140% AMI were sold. The 140% AMI units are not as attractive currently because of soaring interest rates up to 7%. Deed restrictions have been modified to allow institutional purchase and rental to employee occupants exceeding the income limitations.</p> <p>8 more deed restricted units (4 at 80% AMI and 4 at 140% AMI) are nearing completion by spring 2023, bringing the total to 38.</p> <p>Finally, the commercial building is being remodeled to provide 6 80% AMI units. This may be delayed, avoiding flooding the market with too many similar units.</p> <p>The total slated at completion of the project is 44 units.</p>
	<p>By December 31, 2022, the City will commence construction (with or without partners) on no less than an additional sixty 140% or less AMI units.</p> <p><i>Lead: City Manager</i></p>	<p>The developers at Gunnison Rising have been notified that the City will be exercising its right under the Annexation Agreement to activate the land to be used for affordable housing (approximately 200 units depending on the location which affect density). This could develop into the next housing project such as Lazy K but is dependent upon funding.</p> <p>Preservation of existing units is also a strategy and the City is working to preserve housing stock at Frontier Land Mobile Home Park. Property inspections and site surveys are underway.</p>

restricted housing project which are free market.	<p>By December 31, 2024, work with private developers to create an additional 19 or more housing units within the Three Mile boundary of the City of Gunnison.</p> <p><i>Lead: City Manager</i></p>	<p>The developers at Gunnison Rising have been notified that the City will be exercising its right under the Annexation Agreement to activate the land to be used for affordable housing (approximately 200 units depending on the location which affect density).</p>
<p><b>Result B.5:</b> By December 31, 2025, 100 existing substandard housing units will be renovated or replaced.</p>	<p>Enact an incentive program in 2020 to help property owners fund necessary renovations to homes not meeting the City's minimum maintenance standards in its building code.</p> <p><i>Lead: Community Development</i></p>	<p>The 2022 budget included a reappropriated amount of \$32,979 (of an original \$40,000) to incentivize the remediation of dilapidated structures. Any amount remaining can be rolled to 2023.</p> <p>Availability of service fees, as approved on March 28, 2023 are scheduled to take effect 9/1/23 to provide a disincentive to keeping structures in a dilapidated, unoccupiable status.</p>
	<p>Work with the Housing Authority to expand the GV-HEAT program so that we are renovating 25 – 30 units per year by the end of 2021.</p> <p><i>Lead: Public Works</i></p>	<p>The 2023 budget includes \$25,000 for GV-HEAT. \$27,000 was expended in 2022 to complete renovations on 12 homes. GV-HEAT provided a report to the Council on March 7, 2023. In 2022, 28 homes were retrofitted (14 in the City of Gunnison, 14 GCEA). 6 additional homes are on the waitlist. The projection for 2023 is 37 homes (23 City of Gunnison and 14 GCEA).</p>

### C. Multi-Modal Transportation

Residents and guests will increasingly experience safe and inviting non-motorized and motorized access across the City and Highways 50 and 135, which will also enhance the vitality/economic success of the city's commercial areas. Through regional collaboration and investment, residents and visitors will have access to convenient alternative forms of transportation throughout the community and to regional destinations. Specific results to address this issue include:

Result	Strategy	Update/Next Steps
<b>Result C.1:</b> By December 1, 2023, City of Gunnison residents will experience safer streets on which to walk, ride, and drive by reducing the number of vehicles speeding to under 20% of all vehicles for any location in the City.	The City has budgeted for and will hire 17 police officers to maintain an effective staffing of 16 officers (given attrition, vacation/sick leave) which will allow one officer to have a focus on traffic enforcement when two other patrol officers are on duty.  <i>Lead: Police Dept.</i>	<p>The Safe Streets project kicked off on August 15th with representatives of CDOT, the consulting team, County, and City Staff. Near term ideas have been developed for implementation before plan completion. Next round of consultant meetings is planned for December 8th &amp; 9th in Gunnison.</p> <p>The City has budgeted for 16 police officers given attrition, vacation/sick leave) which will allow one officer to have a focus on traffic enforcement when two other patrol officers are on duty. An additional officer is authorized for hire with one FTE in overhire status, supported by a reserve in the Marijuana Mitigation Fund. The City has recently hired 2 new officers and still has 3 officers to hire to be at full force. One P.O.S.T. certified candidate is undergoing psychological evaluation with hopes to have an offer of employment in the near future. After an additional 12 weeks in the Field Training Officer Program, the office will only be down two officers.</p> <p>The speed data is now available on the City's web site.</p> <p>The police department has continued to be short staffed in 2022 and early 2023 so implementation of the 17th officers has not been achieved. A new officer was hired and began work February 21, 2023. As of March 19 31, 2023 the department is down 3 officers if you count the 17th position.</p>
	If more than two people are on duty for a shift, one officer will be assigned to traffic enforcement.  <i>Lead: Police Dept.</i>	<p>When shifts have three officers, one of the three officers will be doing traffic enforcement. With staffing down 3 officers, this has been a challenge.</p> <p>Policy was updated August 1, 2022, to reflect an increased patrol presence by assigned one officer to focus on traffic enforcement when more than two uniformed officers are on duty.</p>
	Police officers have received clear direction on traffic enforcement and the issuance of citations.  <i>Lead: Police Dept.</i>	<p>Department policy reflects an importance placed on traffic enforcement of violations that contribute to traffic accidents. Policy was updated August 1, 2022, to reflect an increased patrol presence by assigned one officer to focus on traffic enforcement when more than two uniformed officers are on duty.</p> <p>At the April 11, 2023 meeting, the Council directed the Police Chief to reduce the policy guideline for suggested issuance of speeding tickets form</p>

		10 MPH over the speed limit to 5 MPH over. This did not remove officer discretion.
	<p>Continue to implement an educational campaign to inform the public that the residential speed limit is 25 mph including publishing how many traffic tickets were issued.</p> <p><i>Lead: Police Dept.</i></p>	<p>When not in use for special events and weather dependent department message trailers are moved around town advertising traffic safety messages including 25 MPH. Additionally, traffic data including numbers of tickets and traffic contacts is placed on the city web site.</p>
	<p>Based on season and location the City will implement traffic calming strategies including but not be limited to, temporary bulb outs, temporary speed bumps, signage/stop signs, and other devices to reduce the width of roads or slow traffic.</p> <p><i>Lead: Police Dept. and Community Development</i></p>	<p>Staff applied for the Revitalizing Main Street (CDOT) grant to help fund some of the "quick wins," but the proposal was turned down since the measures were considered temporary. The Council awarded a bid for the Ohio Avenue Safe Walk project which will include a bulb-out at Ohio and North Main.</p>
	<p>If there is a complaint on speeding, officers will use a mobile device to measure the driver's speed to first determine if more than 20% are speeding. If so, the location will be the focus for additional enforcement and evaluation for traffic calming.</p> <p><i>Lead: Police Dept.</i></p>	<p>Funding was received in October 2023 to order a portable traffic data collection device to be used for citizen complaints. Device was received in December.</p>
	<p>Implement a framework for measuring this result so that it clearly communicates progress to the Council and the public. This may include purchasing additional speed monitoring signs.</p> <p><i>Lead: Police Dept.</i></p>	<p>Information on traffic counts, traffic contacts and citations issued are posted on the web site. Data has been provided to the traffic consultant developing a traffic safety plan. Three additional driver feedback signs were order in 2022 and are scheduled to be delivered in February 2023. Two of the signs are anticipated for N Main St, subject to CDOT approval. If not approved, they will be utilized at other locations on city streets. The third sign is planned for South bound traffic on Colorado St to assist with a driveway conflict for the hospital. The three existing driver feedback signs are also being reevaluated in 2023 to determine if they should be relocated. Relocation will have to be with CDOT approval.</p>

		Chief Robinson will present some options for the potential to install additional speed signs at the April 11, 2023 meeting. The Council approved the purchase of two additional variable speed signs (for a new total of four) to be placed at the entrances to the City to reduce vehicles speeds. The two signs on North Main have been installed.
<b>Result C.2:</b> By December 31, 2023, working with the Colorado Department of Transportation, the City will complete a Highway Access Plan for Highways 50 and 135 to improve pedestrian, cyclist, and vehicular safety into and around Gunnison. This will include recommendations on improving multi-modal crossings of Highways 50 and 135 and how future new development to the north and west of the City would connect to these Highways.	Complete traffic data collection by October 1, 2020, for the Access Plan.  <i>Lead: Community Development</i>	The Multimodal Access Control Plan and Safe Streets project kicked off on August 15, 2022 with representatives of CDOT, the consulting team, County, and City Staff.
	Staff will facilitate a brainstorming session with the City Council by December 31, 2021, and applicable property owners on ways to improve vehicular safety within and exiting the City Market/Walmart parking lots.  <i>Lead: Community Development</i>	Speed signs are being explored to help reduce speeds at the exit of the parking lots. Chief Robinson presented some options to Council consideration at the April 11, 2023 meeting and one speed sign will be installed for northbound traffic on North Main to reduce speeds around this intersection.  The CDOT Access Control plan also has had several safety enhancements being explored to improve future access such as a Florida "T" right-in, right-out limitation to turning movements.
	Complete the Access Plan by December 31, 2023.  <i>Lead: Community Development</i>	The Multimodal Access Control Plan and Safe Streets project kicked off on August 15, 2022 with representatives of CDOT, the consulting team, County, and City Staff.



<b>Result C.3:</b> By 2025, the City will implement east-west/north-south bicycle and pedestrian routes/urban trails with wayfinding and ADA compliance that provide efficient non- motorized routes to key amenities and trail systems.	By December 31, 2024, develop a conceptual plan for Escalante Road working with Gunnison Rising and Western Colorado University to improve multimodal access. (This is being discussed with a new housing project proposed by Western on Georgia and Escalante).  <i>Lead: Community Development</i>	This strategy has not yet begun.
	By January 1, 2023, obtain or appropriate funding to work with Western Colorado University on branding for citywide wayfinding.  <i>Lead: Community Development</i>	
	Complete the Ohio Ave improvements between Western and Spruce Street by December 31, 2022, as Phase 1, and from Spruce to 11th Street by December 31, 2024, as Phase 2.  <i>Lead: Public Works</i>	<p>Only one bid was received in December 2022 and it was well above the allotted resources. The 2023 budget includes \$2,050,000 for this project, with funding coming from grants and contributions for \$1,896,750.</p> <p>Public Works is applying for two grants from the Federal Transportation Alternatives Program and the CDOT RAISE grant, which are due at the end of February. These grants are hoped to make the project feasible.</p> <p>The project is being rebid in the spring of 2023 with à la carte alternate bids options allow portion of the project to be construction of funding is not sufficient.</p>
<b>Result C.4:</b> By December 31, 2026, the City will establish/build a multi-modal transportation hub with valley partners to provide cross-town, and regional connectivity for Gunnison residents and visitors.	Work with the Regional Transportation Authority as part of the 2022 Access Plan to identify a location for a multi-modal transportation hub by December 31, 2021.  <i>Lead: City Manager</i>	<p>The RTA Transit Center may be something that can come to fruition as the RTA has been told that the State of Colorado has designated \$1M for the project and that these funds will be available in 2025. The RTA Board presented a project proposal and site request during the April 11, 2023 work session. While the Council passed on the proposed location at the Community Center site, the Council committed to assisting with identification of an alternate site.</p>

	<p>Working with the Regional Transportation Authority develop a funding strategy and pursue appropriate grants to build a multi-modal transportation hub by December 31, 2023.</p> <p><i>Lead: City Manager</i></p>	<p>The RTA Board presented a project proposal and site request during the April 11, 2023 work session. While the Council passed on the proposed location at the Community Center site, the Council committed to assisting with identification of an alternate site.</p>
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## D. Environmental Sustainability and Resiliency

The natural environment we rely on is changing in many ways due to climate change that both requires the City to reduce its carbon footprint along with becoming more resilient to changes in our natural environment. Moving forward, the City of Gunnison will be a regional leader for responsible and sustainable practices, natural resource protection, and reducing carbon emissions. As a service provider for electricity, water, and solid waste, the City will work toward eliminating carbon-emitting sources from its energy portfolio, reduce water consumption, and implement strategies for reducing, reusing, and recycling solid waste.

Note: Readers should review the Gunni CARES 2030 Plan for a full overview of the results, goals, strategies, and actions associated with the City's commitment to reduce greenhouse emissions and improve its environmental sustainability. This plan can be found at [Gunni CARES 2030](#).

Result	Strategy	Update/Next Steps
<p><b>Result D.1:</b> Results: By 2030, residents, guests, and students in the City of Gunnison will experience continued critical services (food, water, shelter) through the following measures:</p> <ul style="list-style-type: none"> <li>A. Gunnison Valley residents can support themselves with basic needs (food, water, shelter, fuel) for 5-7 days in the event that distribution/delivery systems are disrupted.</li> <li>B. The City of Gunnison continues to provide reliable clean water as the Valley faces hotter temperatures, lower water levels in the Gunnison River, and peak flows that occur earlier in the year making our ability to provide water for our customers more challenging in the future.</li> <li>C. Vulnerable populations will have equal access to resources and support during natural</li> </ul>	<p><i>Lead: Finance (performance contract)</i></p> <p><i>Lead: Public Works (water)</i></p> <p><i>Lead: Parks and Recreation (community connections)</i></p>	<p><b>Performance Contract:</b> The Energy Performance Contract with McKinstry includes the connection of a generator to the City of Gunnison Community Center. The design engineers found the output from the donated generator from AMAX greatly exceeds the load of the Community Center. They are taking a look at a few options that include a load bank to allow the existing generator to be used versus the purchase of two generator that are right sized for the two meters that would avoid trenching costs. Any residual value on the sale of the used generator would be used toward the project to accomplish the goal of the Community Center being a viable emergency shelter.</p> <p><b>Water Treatment Plant:</b> Please see below for specifics related to the Water Treatment Plant.</p> <p><b>Resiliency Micro-Grants:</b> \$7,600 is included in the 2023 budget to support twelve resiliency micro grants to facilitate neighborhood connections that are shown to enable better community support during disasters.</p> <p><b>Whole Community Inclusion Workshop Roadshow:</b> The West Region Emergency Management Office has scheduled the Colorado Whole Community Inclusion Workshop Roadshow Tuesday April 18, 2023 to highlight there are resources that EVERYONE needs access to in order to function before, during, and after emergencies, regardless of who we are. These workshops will highlight the use of the Communication, Maintaining Health/Medical, Independence, Safety/Support Services, Transportation (CMIST) resource memory tool to identify needs and gaps across Colorado's All Hazards Regions to strengthen Whole Community Inclusion.</p>

<p>disasters, emergencies, and climatic events.</p> <p>D. Gunnison residents, public institutions, and private businesses will continue to support each other and their community on a day-to-day basis and during emergencies to experience a high level of mutual support.</p>		
<p><b>Result D.2: ENERGY</b> - By 2030, achieve a 50 percent reduction in aggregate greenhouse gas emissions, including energy, transportation, and operations, from a 2020 baseline.</p>	<p><i>Lead: Public Works</i></p>	<p><b>Energy Mix:</b> An increase of 2% is included to allow the City to continue buying all available renewable energy sources from MEAN at the "Green Rate" as they become available. The goal is to secure the equivalent of 100% renewables from MEAN. Reduced WAPA hydro power will be an immediate issue.</p> <p><b>Local Generation:</b> Working with MEAN on a distributive power project where MEAN could build a significant renewable project in Gunnison. The City Council, during their March 7, 2023 meeting, approved moving forward with planning for a solar array to power the water treatment plant during the day (preliminary plans to locate this on the Van Tuyl Ranch). The location continues to be an ongoing discussion as a result of community input and may be relocated as the project moves through the PUD amendment process that includes public hearings. To date, rooftop solar is the preferred method of local generation.</p> <p><b>Building Energy Performance Contract:</b> \$690,000, leveraging energy conservation measures nearing \$4M</p>
<p><b>Result D.3: WATER</b> - The City of Gunnison provides an adequate domestic water supply (excluding irrigation) while supporting a healthy aquatic ecosystem in the Gunnison River.</p>	<p><i>Lead: Public Works</i></p>	<p><b>Water Treatment Plant:</b> Public Works has completed an update to the City's 2008 water master plan to evaluate current and anticipate future water distribution and treatment issues. A new surface water treatment plant is being planned over the next five years. This will provide additional redundancy for water delivery to Gunnison in an increasingly drier climate.</p>
<p><b>Result D.4: WASTE</b> - By 2030, the City of Gunnison will have improved its waste management methods by increasing diversion rates from the landfill from a 2020</p>	<p>By December 31, 2022 create the Gunni CARES Task Force and appoint the Task Force.</p> <p><i>Lead: City Manager</i></p>	<p>This strategy has not yet begun. It is being held until Council delivers direction on the use of a committee made of existing staff, a hired consultant, or a dedicated employee to be responsible for working with the task force.</p>

<p>baseline even with a growing population. (Current diversion rate is 2%).</p>		<p>The City was awarded a planning grant from DOLA for a Master Plan for the WWTP Compost site. This will include plans for reducing waste going to the landfill. Cooperation is underway with a local non-profit to forge a partnership for obtaining a construction grant and identifying methods to encourage community composting.</p>
	<p>Fund at least a part time position in the 2023 budget to support the implementation of the Gunni CARES 2030 Plan.</p> <p><i>Lead: City Manager</i></p>	<p>The 2023 Budget includes an appropriation for \$150,000 to support this strategy and this is awaiting Council approval to move forward.</p> <p>The City has hired Abby Slattery, an intern through Western's MEM program, to conduct research around the benefits of hiring a sustainability coordinator, assess solar panels and interaction with agriculture for the Van Tuyl, and explore community composting to be incorporated with the Gunni Gold wastewater treatment composting operation.</p>



**To:** City Council  
**From:** Ben Cowan, Acting City Manager  
**Date:** Tuesday, May 23, 2023  
**Subject:** Street and Recreation Funding Work Session

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### Purpose:

Voters did not approve a November 2022 ballot question seeking to increase funding of street maintenance in an amount necessary to sustain the current number of lane miles of City streets. The 2032 sunset of 75% of the special Parks and Recreation Tax creates an additional funding shortage. Discussion of strategies to address these problems will be a topic of a work session during most upcoming council meetings.

### Background:

For three primary reasons, the City does not have enough to adequately maintain the streets in their current condition, which are overall graded as “good” to industry standards.

The reasons for this circumstance can primarily be attributed to the following:

- 1) Over the last 25 years, sales tax has increased by approximately 200%, whereas costs for road base and roto milling have escalated 800% and 500%, respectively, over the same period.
- 2) Highway User’s Trust Fund revenues have only increased from \$140,659 to \$188,044 (34%) over the last 25 years due to a flat rate and increased use of fuel efficient and electric vehicles that don’t pay any or as much fuel tax.
- 3) The City has used a “band aid” approach to extend street life by overlaying rather than milling out old asphalt. This has created a significant crown in the roads and this method can no longer be used.

SHALL THE CITY OF GUNNISON TAXES BE INCREASED BY \$1,414,096 ANNUALLY (WHICH AMOUNT REPRESENTS ESTIMATED REVENUES IN 2023, THE FIRST FULL FISCAL YEAR OF COLLECTION) AND BY WHATEVER AMOUNT IS GENERATED THEREAFTER FROM A SALES AND USE TAX IMPOSED AT THE RATE OF ONE-HALF OF ONE PERCENT (0.5%), BEGINNING JANUARY 1, 2023, FOR THE EXCLUSIVE SUPPORT OF THE FOLLOWING: MAINTAINING AND REHABILITATING EXISTING STREETS AND RELATED INFRASTRUCTURE SUCH AS CURBS AND GUTTERS, ADA ACCESSIBILITY AND DRAINAGE;

SHALL APPLICABLE PROVISIONS OF THE CITY CODE BE AMENDED BY ORDINANCE OF THE CITY COUNCIL CONSISTENT WITH THIS BALLOT ISSUE TO PROVIDE FOR THE TAX INCREASE AND THE DEPOSIT OF REVENUES FROM SUCH TAXES TO BE ACCOUNTED FOR IN THE APPROPRIATE FUNDS OR ACCOUNTS OF THE CITY AND USED SOLELY FOR THE ABOVE PURPOSES; AND SHALL SUCH TAX REVENUES AND ANY INTEREST THEREON BE COLLECTED AND SPENT AS A VOTER APPROVED REVENUE CHANGE AND NOTWITHSTANDING ANY REVENUE EXPENDITURE LIMIT CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

<b>Y</b> Yes/For	44.30%	1,093
<b>N</b> No/Against	55.70%	1,374
		2,467



The November 2022 ballot initiative for street funding failed by 281 votes, 141 people (6% of voters) changing their votes to a yes would have changed the outcome.

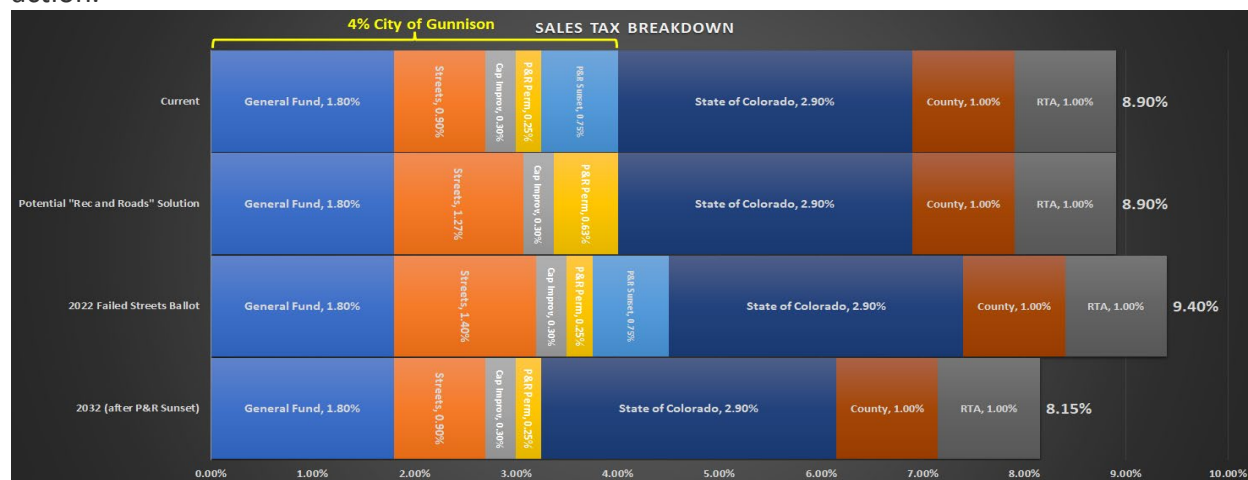
### Work Sessions

**January 24, 2023** - The Council consensus was that a key factor in addressing the shortage for road funding is public education regarding the issue. Talking with citizens about the challenges will unearth various solutions or combinations of solutions to allow for adequate future maintenance of the City's most costly asset – its system of streets.

**February 28, 2023** - We discussed a preliminary schedule with which to manage expectations on timing for proposed activities and if a preferred alternative can be identified within the next couple of months, that ideally the outreach and education campaign to follow will be focused on a singular course of action for the voters to decide upon.

**March 7, 2023** - We reviewed a summary of arguments for and against the 2022 ballot initiative, a list of funding needs and approximate costs, strategies to increase voter acceptance, and the emerging strategies with a list of pros and cons. We also explored the limitations with making budget cuts (only cuts to about 24% of the overall budget or \$10,950,444 actually can be redirected to street purposes) as 76% of the budget is restricted for particular purposes unrelated to streets. Among the remaining discretionary budget, the Council has surmised about \$350,000 can reasonably be cut without making dramatic cuts in essential services. We also explored using a funding model tool to help play out various scenarios as we explore suitable potential solutions.

The below illustration has been used to help illustrate the tax implications of various courses of action.



Significantly, a funding strategy charrette is **scheduled for April 24 at 6pm at the Gunnison Community Center to invite the public and interested groups to help identify a course forward.** Planning for this event is the topic for this work session.

#### *IMS Pavement Maintenance System Update*

Public Works initiated work to update the existing pavement maintenance system, which was presented to the Council on April 11, 2023. The analysis included:

1. An updated recommendation for the annual amount needed for road maintenance to maintain a manageable backlog using current actual unit rates, rather than using inflated estimates from the 2019 report, which resulted in a deficit of approximately \$950,000 annually for spending for street maintenance.
2. A recommendation for what could be done if funding levels aren't increased. This would be coupled with a mapping element that identifies the streets that would be selected as ineligible for future maintenance funding. A map was included with this projection.

#### *Street Funding Strategy Team*

A team of key City staff has been put together to develop an educational campaign. This team will take the lead in scheduling, developing and implementing plans to address the shortage in funding for roads. Members have been selected as having a key role in either analyzing the problem, developing solutions, or communicating the results of meetings with the Council and the public. While the request for a tax increase is clearly a consideration, other strategies for funding including redistribution of costs within the City budget or other revenue generation ideas are being deliberated. Nothing is off the table, but the main focus is to help our citizens understand that, without a change in direction, the City is on a path that results in potentially half of City streets becoming gravel over the next several decades.

The group has been debating the merits of various courses of action on a weekly basis, has developed a schedule of activities, and distilled an assortment of feedback regarding past funding efforts to a listing of arguments for and against.



### *Parks and Recreation Advisory Committee (PRAC) Meetings*

Another funding issue looms for funding Parks and Recreation activities when the 1% special tax sunsets to become only a 0.25% tax. Staff joined a February 8 PRAC meeting to brainstorm ideas to simultaneously solve both issues and we gained some very valuable feedback from the group. A strategy was presented to you at your February 14, 2023 meeting that may solve both the streets and the recreation funding issues. Some specific feedback from PRAC during the meeting included the need to gather examples from other communities that didn't address a lack of funding as a case study, creating messages that create a living experience for someone who doesn't know the specifics about road construction, etc. The group does think a cooperative strategy to simultaneously address both funding issues while not increasing taxes is intriguing. The major drawback is that neither streets nor parks and recreation will receive all of what is desired to fully fund the needs. Using preliminary estimates, both needs are likely 30% short. Perhaps this could be addressed in terms of small, palatable budget cuts or spacing out the timing of various proposed projects to allow cash reserves to be adequately built. If this option deserves more attention, next steps are to understand the costs more fully and better understand what the public feels is necessary to fund in the future, if anything.

PRAC met again on February 22 to continue the discussion. While the meeting only had four attendees, they provided the Council a formal recommendation letter to frame their initial positions, as noted below. A meeting has been scheduled with PRAC on April 6 to discuss options, further analyze the idea and/or perhaps they can come meet with the Council at an upcoming meeting soon.

*Sunsetting of the 1% rec sales tax and possible partnership to address funding for roads.  
Here are our initial comments:*

- *We agree that a ballot proposal is necessary to extend funding for recreation programs and facilities so that we can continue to provide recreational amenities to residents at a reasonable cost and so that Dan Vollendorf and his staff can engage in long-term planning (including initiation of Phase III of the Community Center).*
- *We believe that a ballot proposal that does not increase the sales tax would be more palatable to voters.*
- *More time is needed to study and collaborate on this issue and to educate the public and generate support for any proposed initiatives. It would be premature to consider any sort of ballot proposal in 2023.*

- *We strongly believe that the recreation program should be able to “live out” the 1% funding until 2032 as voted on by the public.*
- *We support a ballot initiative that would restructure and extend the 1% tax so that in 2032 .75 would continue for recreation funding and .25 would go to fund roads. At this point, we believe it would be challenging to build and maintain Phase III (along with maintaining the rest of the recreation facilities and programs) with less than .75.*
- *We discussed the importance of transparency to the voters, the possibility of another sunset date (vs “in perpetuity”) and keeping the two funding areas separate for the voters as education and ballot language are developed.*

As of the writing of this memo, we believe PRAC has reversed their recommendations for waiting, along with the allocated percentage. Staff will meet with PRAC again on May 5, 2023 to see if a compromise position could be reached on the funding allocation between now and the sunset.

#### **Staff Recommendation:**

**For this work session, staff would like the Council to hold a Council-led discussion about prior work session information.** If desired, please provide staff direction for future work session items or related activities. The Streets and Recreation Funding Task Force has a recommendation letter which is included in your packet materials.

#### **Council’s Strategic Criteria:**

This policy initiative or project addresses/relates to each of these criteria as follows.

##### **A. Public Safety and Community Resilience.**

Having funds available to support the construction or installation of traffic safety measures makes the streets safer for the traveling public, whether by foot, bicycle or vehicle.

##### **B. Public Engagement which fosters racial and cultural equity, inclusivity, and diversity.**

The City of Gunnison strives to provide goods and services at a fair cost that reflects the materials and labor needed to produce the goods and services.

This budget respects the rights of others by providing equal treatment and opposing discrimination, harassment or other unfair practices.

The budget process provides people with opportunities to be part of decisions that impact them. Public finance decisions often have big implications for people outside the finance office. The City seeks citizen input regardless of the source and provides services without regard to racial or ethnic origin.

**C. Achieving the City's Environmental Sustainability Goals.**

Not applicable.

**Action(s) Requested of Council:**

**Work session only.** Staff is seeking input on the above captioned agenda.



# City of Gunnison

May 5, 2023

The Honorable Mayor Diego Plata and Councilors  
PO Box 239  
Gunnison, CO 81230

## RE: Recommended Solution to the Recreation and Street Funding Deficit

Thank you for your time and effort this year in examining the annual funding shortage for street maintenance of \$950,000 and the upcoming sunset of 75% of the special Parks and Recreation Sales Tax. We appreciate and agree with your consensus that these are two critical issues, if left unaddressed, that will have a serious negative impact on the preservation of our street system and two key recreational facilities. Specifically, in the next 20 years, likely 50% of our City streets will have failed and the pool and the ice rink may need to close. While these seem like dire outcomes, it is unfortunately the reality of the situation and bringing a solution will require voter intervention.

As you know, there are two primary emerging strategies to address the problem:

- 1) **New Sales Tax.** Pass a new sales tax aimed at maintaining streets with the potential for setting a rate that simultaneously can support necessary work in the alleys, construction and maintenance of sidewalks, street safety improvements, and ADA accessibility. Within the next nine years, this method would also require the City to bring to the voters an initiative to keep and retain at least a portion the 0.75% sales tax so maintenance funds for the pool and ice rink continue.

Pros	Cons
visitors pay a 35% estimated share of the cost with a sales tax	The city tax rate and the overall sales tax rate is already high
<b>a rate for streets alone potentially allows for all needs:</b> <ul style="list-style-type: none"><li>• street maintenance, alleys and sidewalk maintenance and construction, safety enhancements, and accessibility</li></ul>	Doesn't address the funding strategy for Parks and Recreation, which forces another ballot initiative in the next nine years
spending money now on maintenance saves money later	
hard surfaced streets protect water and air quality	
the city can continue to use general fund money for current services	
streets in good condition are safer	

- 2) **Recreation and Roads Redistribution.** Bring an initiative to voters, without an increase in the tax rate, to remove the sunset on the Parks and Recreation tax while redistributing the tax to allow support of both recreation and street related needs. This will require some additional budgetary cuts within the General Fund but brings the City within striking distance to address both funding issues without significant cuts in services to the community.

Pros	Cons
Does NOT result in a tax increase from the existing 4% rate	Utilizing the 0.75% sunseting amount does not accommodate all funding needs (some needs won't be met, or funding cuts must be made)
It utilizes the 0.75% sunseting amount to pay toward approximately	Until the debt on the pool and rink is retired in 2032, flexibility is limited



## City of Gunnison

0.95% in needs	which creates a lot of competition for the funds for the next 9 years
Proactively manages two issues now that will have to be dealt with at some point in the future	This is a redirection of a portion (perhaps 0.37%) of the 0.75% of voter approved recreation funds until 2032 to streets.
Adjusts existing allocation percentages to better fund today's needs (living within the City's means)	

Our Streets and Recreation Funding Task Force has been meeting weekly for the bulk of 2023. This work has included looking at various strategies, pouring through and analyzing citizen comments from both failed ballot initiatives, and talking with anyone who will listen to determine what has the best chance at addressing these critical issues. We have also met with the Parks and Recreation Advisory Committee and the Senior Advisory Committee. Together with the City Council, we have conducted a public input charrette to explore the options.

The purpose of this letter is to make two specific recommendations to the City Council.

First, we recommend that you **identify a specific alternative that we can use to move into the next phase of education and outreach** over the course of the summer. This allows for a targeted effort that will give the preferred alternative the best chance of passing. In our opinion, having multiple pathways will cripple these efforts by diluting the message and causing people to converge on multiple pathways instead of rallying around a singular solution.

Education and Outreach:		11/May	23/Aug
✓ Define Audiences	Unassigned	11/May	11/May
✓ Website Development	Unassigned	15/May	23/Aug
✓ Basic Information	Unassigned	15/May	05/Jun
✓ FAQ Development	Unassigned	11/Aug	23/Aug
✓ Social Media Posts	Unassigned	22/May	23/Aug
✓ Media Content Development	Unassigned	22/May	19/Jun
✓ Media Content Posting	Unassigned	30/May	23/Aug
✓ City Fest	Unassigned	20/Jul	20/Jul
✓ Radio Spots	Unassigned	21/Jul	23/Aug
✓ Newspaper Articles	Unassigned	21/Jul	23/Aug

Secondly, **this task force unanimously requests that the Council provide staff direction to advance the sales tax sunset removal and redistribution alternative into an education and outreach phase.** If the Council decides to place an initiative on the ballot prior to the September 8 deadline, this would allow our team to educate the public about the preferred direction so we can truly know that the public has sufficient information in front of them to make an informed vote on November 7, 2023.

The primary reason for the rejection for the last two ballot measures was that the public largely believes the sales tax rate is already high but in terms of the City of Gunnison (4%) and the overall tax burden at 8.9% (State of Colorado 2.9%, Gunnison County 1%, RTA 1%). Only 11% of Colorado municipal tax rates are higher than the City of Gunnison. The reason we have these funding issues is that voter-imposed allocations prevent reasonable changes to allow for appropriate prioritization of needs and an impending sunset will reduce resources. The redistribution strategy allows for all critical needs to be addressed while making reasonable budget cuts to demonstrate to the public a good faith effort was made – with the result being that *the City can keep current services in place without an increase in the tax rate.* Due to a variety of factors including tax fatigue, crowded ballots, etc., we think now is the best time to work toward getting a solution passed through the election.



## *City of Gunnison*

If there is any more public input you feel is necessary or additional analyses made, please let us know. We look forward to continuing the conversation and getting to work!

Sincerely,

Erica Boucher	City Clerk
Ben Cowan	City Manager
David Gardner	Public Works Director
Connie Johnson	PW Administrative Assistant
Jason Kibler	Streets and Refuse Superintendent
Cassie Mason	Deputy City Clerk
Anton Sinkewich	Community Development Director
Laura Stanley	Court Clerk/Communications Asst.
Lisa Starkebaum	Engineering Technician
Cody Tusing	City Engineer
Dan Vollendorf	Parks and Recreation Director

May 5, 2023

To: Gunnison City Council

From: Parks and Recreation Advisory Committee (PRAC)

We met on May 5<sup>th</sup> to continue discussions about a proposed ballot initiative to address the sunset of the 1% recreation sales tax in 2032 and funding for road maintenance. After careful deliberation, along with additional information and data provided by Ben C. and Dan V., we have revised our earlier position regarding the ballot initiative:

- We agree that a ballot proposal is necessary to extend funding for recreation programs and facilities so that we can continue to provide recreational amenities to residents at a reasonable cost and so that Dan and his staff can engage in long-term planning (including the building of Phase III of the Community Center).
- We believe that a ballot proposal that does not increase the sales tax would be more palatable to voters, recognizing that a percentage of the voters will not support extending the 2032 sunset.
- We support a fall 2023 ballot initiative.
- We support a ballot initiative that would restructure the 1% tax to allocate .63 to parks and recreation and .37 to roads. More detailed budget estimates provided by Ben suggest that the city would still be able to complete Phase III of the Community Center and maintain parks and recreation facilities moving forward with a .63 portion of the current sales tax.
- We would encourage the city to look for ways to pay down the current rec facility debt so as to begin Phase III sooner than 2032 if possible.
- We discussed the importance of voter education, transparency and ballot clarity. We also encourage consideration of a 30-year sunset on a portion of the recreation sales tax (vs “in perpetuity”).

Parks and Recreation Advisory Committee

Colt Alton

Sherri Anderson

Robert Czillinger

Kathleen Kinkema

Kristi Murtaugh

Layne Nelson

Jennifer Swift