

101 Midland Avenue, Basalt, CO 81621

Meeting Date: May 10, 2016
Location: Town Council Chambers

Time: 5:30 p.m.

TOWN COUNCIL MEETING AGENDA

5:30 Worksession: Basalt Finances

6:00 1. Call to Order (Mayor Whitsitt)

6:01 2. Roll Call (Pam Schilling)

6:02 3. Council Acknowledgements

- 3A. Police Chief Greg Knott for Contributions to the Glenwood Springs Youth Hockey Association

6:05 4. Consent Agenda (Mayor Whitsitt)

- 4A. **Minutes:** 4Ai. April, 26, 2016; 4Aii. April 27, 2016
- 4B. **Special Event Activity Permit:** Motors on Midland
- 4C. **Resolution No. 17, Series of 2016:** Resolution of the Town Council of Basalt Colorado, Granting Approval for a Sunday Market on Midland Spur and Lions Park in Downtown Basalt
- 4D. **Resolution No. 18, Series of 2016:** Resolution of the Town Council of Basalt Colorado, Approving Use of the Willits Rugby/Soccer Field for a For-Profit Fitness Class

Motion to Consider:

Mayor, I move that the Town Council approve the Consent Agenda as published.

6:15 5. Council and Manager Comments, Reports, Disclosures

- 5A. Manager's Report

6:22 6. Citizen Comments: for Items Not on the Agenda and Items Added to the Agenda After the Deadline

6:25 7. ITEMS FOR COUNCIL CONSIDERATION

7A. Discussion: Check in Our Town Planning Process

7B. Approval of Contract with Old Castle SW Group, Inc., dba United Companies, for the Construction of SH-82 Basalt Pedestrian Underpass Project

6:55 8. RESOLUTIONS

8A. Resolution No. 19, Series of 2016: A Resolution of the Town Council of Basalt, Colorado, Informing Clean Energy Collective (CEC) That the Town is not Pursuing the Purchase of Solar Panels

Motion to Consider:

Mayor, I move that the Town Council Approve Resolution No. 19, Series of 2016.

8B. Resolution No. 20, Series of 2016: A Resolution of the Town Council of Basalt, Colorado, Directing the Town Manager to Draft a letter of Support for the Roaring Fork Apartments Tax Credit Application and Supporting Contribution of \$175,000 for the Construction of the Roaring Fork Apartments Affordable Housing Project

Motion to Consider:

Mayor, I move that the Town Council Approve Resolution No. 20, Series of 2016.

7:05 9. FIRST READINGS OF ORDINANCES:

9A. First Reading of Ordinance No. 13, Series 2016: An Ordinance of the Town Council of Basalt, Colorado, Approving a one-year extension on the document recordation deadline and a corresponding extension of vested property rights for the Roaring Fork Apartments.

Motion to Consider:

Mayor, I move that the Town Council Approve Ordinance No. 13, Series of 2016 on first reading and set the public hearing and second reading for May 24, 2016.

10. INFORMATION AND CORRESPONDENCE:

NO ACTION REQUIRED BY THE TOWN COUNCIL

- A. Accounts Payable
- B. Advanced Agendas
- C. Correspondence to the Town

11. ADJOURNMENT



101 Midland Avenue, Basalt, CO 81621

Meeting Date: April 26, 2016
Location: Town Council Chambers

Time: 6:00 p.m.

TOWN COUNCIL MEETING MINUTES

1. Call to Order (Mayor Whitsitt)

Mayor Whitsitt called the meeting to order at 6:05 PM.

2. Roll Call (Pam Schilling)

Council members present were Auden Schendler, Mark Kittle, Jennifer Riffle, Katie Schwoerer and Gary Tennenbaum. Council member Grauer was absent.

3. Consent Agenda (Mayor Whitsitt)

- 3A. Minutes:** April 19, 2016
- 3B.** Special Event Activity Permit for Aspen Valley Marathon
- 3C.** Special Event Activity Permit for Ragnar Relay
- 3D.** Proclamation – Declaring Friday, April 29, Arbor Day in Basalt, Colorado

M/S COUNCILORS KITTLE AND RIFFLE THAT THE TOWN COUNCIL APPROVE THE CONSENT AGENDA AS PUBLISHED. THE MOTION CARRIED 6-0.

4. Citizen Comments: for Items Not on the Agenda and Items Added to the Agenda After the Deadline

Heather Kent, Homestead Drive, was present to discuss an ongoing driveway issue. Ms. Kent was told that Council would not discuss the matter this evening as they had no background information on the matter and time had not been scheduled for discussion this evening.

Lynnee Mace of the Toklat Gallery, asked Council to please remember the following items when they went on their retreat: Completion of the Roaring Fork Conservancy, employee housing, child care, money spent on the park, the ballot issue – where is that and will it be on the ballot in November, and what's happening with Resolution 9.

Joe Enzer, Kim DuBois and Cindy Hirschfeld were present to discuss their project with Habitat for Humanity as members of the Roaring Fork Leadership Class of 2016.

Genna Moe, Director of the Art Base, was present to welcome the new Council. Genna thanked Council for partnering with the Art Base to help bring vitality downtown with the arts.

Brian Buell was present to bring to the attention of the Town that the Basalt bike park has been neglected over the past few years. Brian said Basalt has a cool place to ride bikes, but the area isn't rideable.

5. Council Comments, Disclosures, and Other Reports

Mayor Whitsitt noted the Council retreat was to be rescheduled.

Katie Schworer reminded everyone to vote in next Tuesday's (May 3) Crown Mountain Recreation District election. There are 2 seats up for election. It is a polling place election – you must show up to vote.

Gary Tennenbaum said that the Status of the Our Town Planning (agenda item 5C) and Council Direction PIF Policy (agenda item 6B) seemed to be premature; Gary felt everybody needed to be brought up to speed on the park and development proposals before Council voted on these. Gary said he would like to table these things; he felt the PIF, especially, was way too early to talk about for setting a policy.

M/S COUNCILORS TENNENBAUM AND SCHWOERER THAT THE TOWN COUNCIL TABLE ITEMS 5B AND 6C TO ANOTHER MEETING OR WORKSESSION TO GET EVERYONE UP TO SPEED.

General discussion followed.

THE MOTION CARRIED 5-0-1 WITH COUNCIL MEMBER SCHENDLER ABSTAINING.

- 5A.** Town Manager's Report
- 5B.** SGM – Town Engineer's Report
- 5C.** Status of the Our Town Planning Process

Town Engineer Louis Meyer presented his report to Council focused on the Basalt Underpass and flood plain re-mapping.

Town Manager Mike Scanlon thanked citizen members Katie Erickson, Lisa George, Maria Palomera, Kellie Smith, Marisol Henriquez, Denise Latousek, Adriana Torres and Jennifer Ellsperman for their work toward the grant application. Basalt was one of 11 projects awarded and will receive the requested \$264,000.

6. TOWN COUNCIL ACTIONS:

6A. Council Consider Appointments to Boards: Discussion of appointments, followed by motion to appoint.

- Ruedi Water and Power Authority(RWAPA): Mark Kittle volunteered to stay on the Ruedi Water and Power Authority.
- RFTA Board: Jacque Whitsitt volunteered to stay on the RFTA board but requested an alternate to attend as well. (Bernie Grauer will be asked to serve as alternate.)
- Basalt Emergency Management Committee (BEMC): Jennifer Riffle

- Northwest Colorado Council of Governments (NWCCOG): Jacque Whitsitt volunteered to serve if meetings could be held by phone; Jennifer Riffle volunteered as alternate. (Staff is to check to see if this could be a staff person rather than an elected official.)
- CORE – Auden Schendler said he would look into this committee.
- Gary Tennenbaum volunteered to continue as VALE Board; Child Care Coalition; and the Nordic Council.

M/S COUNCILORS TENNENBAUM AND SCHENDLER THAT THE TOWN COUNCIL AFFIRM THE APPOINTMENTS AND REAPPOINTMENTS TO RWAPA, RFTA, BEMC, NWCCOG, CORE, VALE (VICTIM AND WITNESSES BOARD), CHILD CARE COALITION AND THE NORDIC COUNCIL AS DISCUSSED. THE MOTION CARRIED 6-0.

It was noted that other boards and committees were to be invited to attend a meeting so council members would have a better idea of what each group does.

6B. Council Direction to Staff Regarding PIF Policy (This item had been continued to a future meeting earlier this evening)

- Discussion of policy, followed by motion to direct staff.

7. EXECUTIVE SESSION:

M/S COUNCILORS KITTLE AND TENNENBAUM THAT THE TOWN COUNCIL ENTER EXECUTIVE SESSION FOR THE PURPOSES OF:

- A conference with our attorney for the purpose of receiving legal advice on specific legal questions in accordance with C.R.S. 24-6-402(4)(b).
- The purchase, acquisition, lease, transfer or sale of property interests in accordance with C.R.S. 24-6-402(4)(a).
- Determining positions relative to matters that are or may become subject to negotiations in accordance with C.R.S. 24-6-402(4)(e).
- Personnel Matters in accordance with C.R.S. 24-6-402(4)(f).

THE MOTION CARRIED 6-0; COUNCIL ENTERED EXECUTIVE SESSION AT 6:47PM.

8. INFORMATION AND CORRESPONDENCE:
NO ACTION REQUIRED BY THE TOWN COUNCIL

- A. Accounts Payable
- B. Advanced Agendas
- C. Correspondence to the Town
- D. Town Clerk Administrative Liquor Actions

9. ADJOURNMENT

M/S WAS MADE THAT THE TOWN COUNCIL ADJOURN THE EXECUTIVE SESSION. THE MOTION CARRIED.

M/S WAS MADE THAT THE TOWN COUNCIL ADJOURN THE MEETING. THE MOTION CARRIED.

The minutes of the April 26, 2016 meeting were read and approved this 10th day of May, 2016.

BASALT TOWN COUNCIL:

ATTEST:

By: _____
Jacque Whitsitt, Mayor

Pamela Schilling, Town Clerk



101 Midland Avenue, Basalt, CO 81621

Meeting Date: April 27, 2016
Location: Town Council Chambers

Time: 5:30 p.m.

TOWN COUNCIL SPECIAL MEETING MINUTES

5:30 1. Call to Order (Mayor Whitsitt)

Mayor Jacque Whitsitt called the meeting to order at 5:30 PM on Wednesday, April 27, 2016.

5:31 2. Roll Call (Pam Schilling)

Council members present were Gary Tennenbaum, Mark Kittle, Auden Schendler, Katie Schwoerer and Jennifer Riffle. Council member Bernie Grauer was absent.

5:32 3. Executive Session

M/S COUNCILORS SCHWOERER AND KITTLE TO ENTER EXECUTIVE SESSION FOR THE PURPOSES OF DISCUSSING PERSONNEL MATTERS IN ACCORDANCE WITH C.R.S. 24-6-402(4)(f). THE MOTION CARRIED 6-0.

4. Adjourn

M/S COUNCILORS SCHWOERER AND SCHENDLER TO ADJOURN THE MEETING AT 6:40 P.M. THE MOTION CARRIED 6-0.

The minutes of the April 27, 2016 meeting were read and approved this 10th day of May, 2016.

BASALT TOWN COUNCIL:

ATTEST:

By: _____
Jacque Whitsitt, Mayor

Pamela Schilling, Town Clerk

TOWN OF BASALT Consent Item	Date: May 10, 2016 From: James Lindt AICP, Assistant Planning Director
	Town Manager Review: MS 10-6-2016

SUBJECT: Consideration of a motion to approve of a Special Event Activity Permit to allow for the closure of Midland Avenue and a portion of Midland Spur for the Motors on Midland car show on June 11, 2016.

RECOMMENDATION: Staff recommends that Council approve the Motors on Midland Special Event Activity Permit subject to the attached conditions.

DETAILS: The purpose of this agenda item is to consider approving by motion the Motors on Midland Special Event Activity Permit. The Applicant, Basalt Arts and Social Happenings (BASH) Committee, proposes to close Midland Avenue and a portion of Midland Spur as can be seen on the attached map for the car show. The soft closure of Midland Spur will occur before the event for the cars entering the show to be organized on Midland Spur before being lead into their places on Midland Avenue. This plan was used last year and the BASH Committee thinks this was a more organized way of sorting the cars in the show.

This event has been held four previous years and is one of the Town's signature summer events. Staff has included the Police Department's comments in the proposed conditions of approval.

RECOMMENDATIONS FROM OTHER BOARDS: The P&Z does not review special event applications.

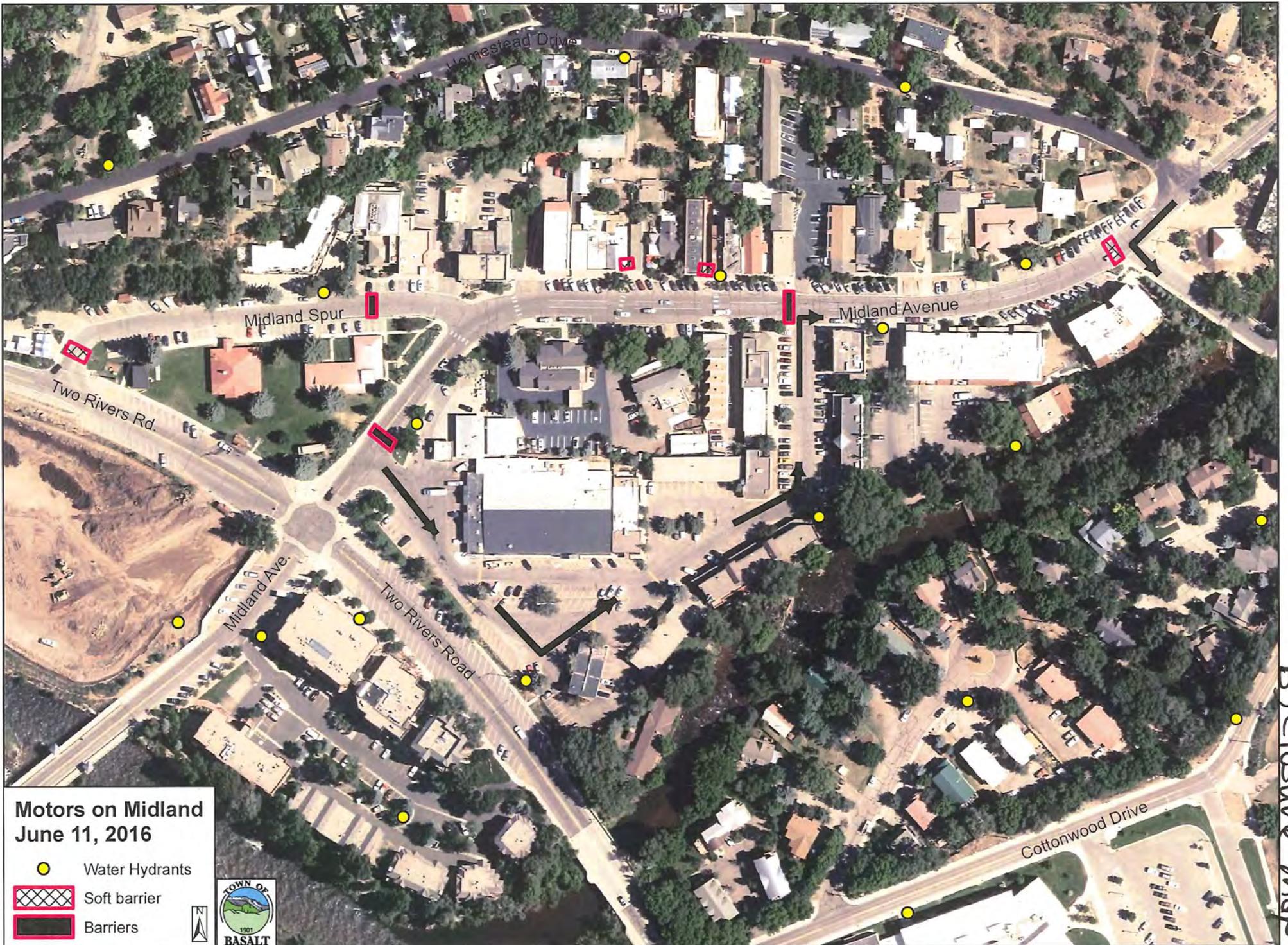
RELATED TOWN STATUTE AND TOWN ACTIONS: Resolution No. 13, Series of 2013 adopting a Special Event Review Policy pursuant to Town Council Policy No. 104.

ATTACHMENTS: A) Draft Conditions; B) Closure and Event Map; C) Resolution No. 13, Series of 2013 and Town Council Policy No. 104

Draft 2016 Motors on Midland Car Show Conditions

1. The Applicant shall adhere to all material representations made in, or in connection with this application.
2. The Applicant shall comply with the requirements of the Basalt Police Department. The roads within the Town shall not be closed, except the area of Midland Avenue as identified on the site plan included in the Special Event Permit Application and an additional closing by Staff at Riverside Drive to reroute boat and non-local traffic around the event area on Cottonwood Drive. The exact location of the closure shall be approved by the Town Manager or the Town Manager's designee, but shall include keeping Basalt Center Circle open so that local vehicular traffic can go around the closure of Midland Avenue. The Public Works Department may close parking as determined necessary by the Town Manager or his designee.
3. The Applicant shall hire professional traffic control personnel to be stationed at the Midland Avenue closure points and at the Midland Spur closure for the duration of the event. Additionally, the Applicant shall have two volunteers or a professional traffic control individual at the Midland Avenue/Basalt Center Circle intersections for the duration of the event.
4. The Applicant shall be responsible for trash collection and removal. All debris and equipment shall be cleared from Midland Avenue on the same evening as the event.
5. The Applicant shall provide recycle bins for the collection of commingled materials (i.e. glass, plastic and metal) and a volunteer to monitor that the appropriate materials are being recycled. All recyclables shall be taken to a location to be identified by the Town's Public Works Director at the conclusion of the event. Recycle bins will be collocated with trash containers. Trash shall be taken to the dumpster at the Town Public Works Shop on Fiou Lane. All single-use food service items shall be compostable or recyclable.
6. The Applicant has requested a separate liquor license application, which is being processed separately from the Special Event Activity Permit.
7. Upon the request of the Town Manager, the Applicant shall conduct a post-event evaluation and de-briefing report and provide it to the Town. The event report would include pertinent observations, notes, and data that may help reduce the environmental impacts of similar events to be held in the future.
8. Any printed materials advertising the event shall, at a minimum, be printed on 50% post-consumer recycled content paper.
9. The Applicant shall provide a plan for portable toilets for review and approval by the Town Public Works Director prior to June 1st. All portable toilets shall be removed before noon on the Monday after the event.
10. If asked, the individual vendors shall provide proof of insurance to the Town. Any liquor license insurance needed will be provided by the Applicant.

11. The Applicant shall obtain the necessary approvals of the Eagle County Health Department to serve prepared foods. The Applicant shall also provide vendors with a resource list identifying sources of eco-friendly event supplies.
12. The Applicant and vendors (including all non-profits) shall not dispense bottled water at the event. (This restriction does not apply to water sold within buildings). The Applicant shall make sure that there is some drinking water for participants from local sources using some sort of tank instead of individual bottles. The Applicant also shall not provide plastic or non-recyclable containers from which to drink the water provided.
13. The Applicant shall submit a detailed plan and diagram to the Basalt and Rural Fire Protection District for review and approval. The detailed plan and diagram shall identify whether heaters are going to be used in the evening. Literature on any heaters to be used shall be provided to the Fire District for their approval of the heaters.
14. Any tents that are over 400 square feet shall be required to have a building permit from the Town of Basalt Building Department.
15. Per discussions with the Fire District, any stage, non-movable structures and features shall be located in a manner such that there is a 20-foot emergency access on Midland Avenue throughout the event for emergency service purposes. There may be obstructions that are easily movable such as chairs and tables in the emergency access.
16. The Applicant shall provide a fire extinguisher plan for review and approval by the Fire District prior the event.
17. The Applicant shall work with the Town Public Works Director to formulate a plan to ensure that the parking spaces that need to be closed to accommodate the event are properly closed.
18. The Town will provide barricades for closing the street.
19. There may be additional events/activities in Lions Park approved by the Town Manager or his designee.
20. Amplified music may occur until 9:00 PM.
21. The Applicant shall establish a point of contact for the Town related to overseeing the event.
22. The Applicant shall work with the Town to provide any additional lighting as determined necessary by the Town Manager.



**Motors on Midland
June 11, 2016**

- Water Hydrants
- Soft barrier
- Barriers



B) Closure Map

C) Reso. 13, Series of
2013 + Council Policy
104

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, ADOPTING A
POLICY FOR SPECIAL EVENTS ON TOWN PROPERTY**

**Town of Basalt, Colorado
Resolution No. 13
Series of 2013**

RECITALS

The Town of Basalt has a collection of documents including the Town Charter, Town Code and various administrative procedures that address the Town's procedures for reviewing special event applications. The Town Council adopted Policy 104 providing that the Town Council would adopt a resolution to finalize the Special Event Review Policy and the Stage Reservation Policy.

The Town Council, through the promulgation of Town Council policies, wants to create a policy framework which Town staff can work within.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
BASALT, COLORADO:**

Section 1. The Town Council supports and affirms the adoption of a Town Council Policy regarding Special Events on Town Property.

Section 2. The Town Council hereby adopts the policy attached as Exhibit "A" regarding **Special Events on Town Property**.

Section 3. This resolution replaces the Town Council action on June 14, 2011, requiring Special Event Permits.

Section 4. The Town Manager shall promulgate, review and recommend changes to the Town's policy on Special Events when necessary. Town Council action is required for all changes to the Special Events Policy pursuant to the adopted Town Council Policy No. 104.

READ AND ADOPTED by a vote of 5 to 0 on March 26, 2013.

TOWN OF BASALT, COLORADO

ATTEST:

By:

Jacque R Whitsitt, Mayor

Pamela K Schilling, Town Clerk



Exhibit "A"
Special Events Policy
Council Policy No. 104

It shall be the policy of the Town of Basalt to require a Special Events Activity Permit for special events or organized gatherings in the Town Parks and on Town Property as follows.

A. Special Events: Closing Town Right-of-Way/Parking

Special events that propose to close portions of or significantly impact the Town right-of-way, or that close more than five (5) parking spaces shall be reviewed by the Town Council through a one-step review process and may be approved, approved with conditions, or denied by the Town Council by motion.

B. Recurring Special Events that Close Town Right-of-Way/Parking

Special events that propose to close or significantly impact Town right-of-way or that close more than five (5) parking spaces on multiple days like the Sunday Market shall require review and approval by the Town Council by Resolution.

C. Special Events: Town Property or Other Property- Not Closing Town Right-of-Way

Special events that do not propose to close Town right-of-way or that do not close more than five (5) parking spaces that are on either private or public property may be reviewed and approved by the Technical Review Committee (TRC) regardless of whether or not alcohol is proposed to be served at the event. In instances where a liquor license is required, the TRC's approval will be contingent on the event receiving a liquor license through the standard liquor license process established in the State of Colorado's Responsible Serving of Alcohol Regulations. In evaluating special event applications, the TRC will bring other referral agencies and tenants on Town property (such as the Taqueria or Wyly) in to provide comments as deemed necessary. The TRC may elevate the review of a special event application to the Town Council in the following instances:

1. There have been problems with a specific event in the past; or,
2. Complaints are received about an event by citizens or Council members prior to the issuance of an approval by the TRC; or,
3. An event is expected to put a significant strain on Town resources as determined by the TRC; or,
4. An event is anticipated to be a significant impact to citizens and property owners; or,
5. Referral comments are received that in TRC's opinion cannot reasonably be addressed with conditions; or,
6. An event that the TRC is not comfortable approving without the Town Council's formal input.

It should be noted that the Town's policy is not to reserve parks except through the Town's Special Events Review Process. An exception to this policy shall be made for the Lion's Park Stage as described in the Town of Basalt's policy for reserving the stage.

D. Reserving the Lions Park Stage

1. The stage shall be reserved through the Town of Basalt Clerk's Office.

In scheduling an event on the Lion's Park Stage, the Clerk's Office will check the seasonal calendar of the tenants in the Town Hall Annex Building to confirm that a proposed event

does not conflict with events and activities of the Town Hall Annex tenants. Additionally, the Clerk's Office will check the Town's Council Room calendar to confirm that a proposed event does not conflict with meetings/events that are scheduled in the Council Room at Town Hall. Where there is a potential conflict between a proposed public event and events/activities of the tenants of the Town Hall Annex Building (currently the Wylie and the Planning Department), the Town Manager or his/her designee shall work with the event organizer and the tenants to attempt to resolve the conflict and will ultimately determine whether a conflicting public event on the stage may be held.

2. Town or Chamber Event Priority- A public event as scheduled by the Town or the Basalt Chamber shall have priority over events scheduled by another entity as long as the Town or Basalt Chamber's event is scheduled at least 30 days prior to the event date.

3. Use of the Restrooms in the Town Hall Annex Building (99 Midland Avenue)
Individuals or entities that would like use of the restrooms in the Town Hall Annex Building in conjunction with reserving the stage shall request approval to use the restrooms from the Town's event coordinator. Use of the restrooms in the Town Hall Annex Building does not exempt the entity putting on the event from having to comply with the Town's Event Logistics Guidelines related to restrooms and wash stations. Individuals or entities reserving the stage that also would like to use the restrooms shall pay an at-cost, non-refundable restroom cleaning fee to the Town prior to the event to pay for a cleaning company to pay for cleaning the restrooms after the event. The Town's event coordinator has the discretion to charge the fee for each night of an event if deemed necessary.

4. Waste Management/Damage- Individuals or entities reserving the stage shall pick up and remove all waste from the stage and the park area around the stage after the event. Individuals or entities reserving the stage shall pay a refundable deposit of \$25 to ensure that the site is returned to a clean and undamaged condition. The deposit will be refunded to the entity holding the event after the Town's event coordinator has inspected the site and determined that it has been returned to a visibly clean and undamaged state. The entity or individual putting on an event is also responsible for repairing any damage to the Town's facilities that occur as a result of an event

5. Fee for Use of Stage- Events that are charging the public to attend or that are selling tickets or products (including alcohol) shall pay the Town a fee equal to the greater of \$50 or 15% of the gross income of the event from ticket and product sales. The event organizer shall submit a report of earnings to the Town and the fee shall be paid to the Town within five (5) business days of holding the event. Events that do not charge public to attend and that do not sell tickets or products are exempt from paying the fee.

E. Environmental Requirements/Logistics

All Special Events shall comply with the attached Green Events Checklist and Special Event Logistics Guidelines. Additionally, no special event on Town property shall sell or disperse bottled water.

TOWN OF BASALT	Date: May 10, 2016
Consent Item	From: Susan Philp, Planning Director
	Town Manager Review: MS Approved 5-6-16

SUBJECT:

Resolution No. 17, Series of 2016 - Approval of Sunday Market for 2016

RECOMMENDATION:

Adopt resolution regarding the use of Town of Basalt Property for the summer 2016 Sunday Market

DETAIL:

The Town Council has approved 7 previous seasons of the Sunday Market and has recognized the importance of the market for the vitality of the community.

The draft resolution is similar to previous years.

The location remains as prior years on Midland Spur.

The Market will begin on Sunday, June 12th and continue through Sunday, September 25th for a total of 16 markets.

Christine Newcomb (who helped with Sunday Market take down in 2015) and Jimmy Dula will be co-managing the market in 2016.

Here are some improvements that we are working on for 2016:

1. Providing SNAP benefits. Jimmy Dula has been taking the lead in seeking grants so that Sunday Market may provide SNAP benefits and eligible families may enjoy benefits of eating healthful fresh food and vegetables. This supports Hunger Free Colorado and Live Well Colorado efforts. Dula is exploring with Valley Settlement how to best approach eligible families. The EBT machine can also be used by other buyers who did not bring cash to the market.
2. Exploring increasing youth exercise opportunities with House with Bounce.
3. Haley Thompson has been working with Staff to determine the feasibility of the Town purchasing a composting bin so that vendors and visitor can bring compost materials to the bin during Sunday Market.

Staff recommends approval of the resolution.

Related Town Statute and or Town Actions: Council Policy 104 establishing that the Town Council will approve events on multiple days like the Sunday Market by Resolution.

Attachments: Draft Resolution

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, GRANTING
APPROVAL FOR A SUNDAY MARKET ON MIDLAND SPUR AND LIONS PARK IN
DOWNTOWN BASALT**

**Town of Basalt, Colorado
Resolution No. 17
Series of 2016**

RECITALS

1. The Sunday Market Board ("Applicant"), requested approval from the Basalt Town Council for the use of Lions Park and a portion of Midland Spur adjacent to Town Hall for the purpose of a weekly, Sunday "farmers" Market.
2. The market will occur each Sunday beginning on June 12, 2016 through September 25, 2016 from 10:00 a.m. until 2:00 p.m.
3. The use of Town property for the Sunday Market requires Council approval by Resolution pursuant to Town Policy 104.
4. The Basalt Town Council considered the application at a public meeting on May 10, 2016.
5. The Basalt Town Council finds that the request is consistent with the applicable provisions of the Town Code, provided Applicant adheres to the conditions identified in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Basalt Town Council of Basalt, Colorado, as follows:

The Basalt Town Council incorporates the above recitals and all exhibits as references and as findings and determinations, and conclusively makes all of the findings of fact, determinations and conclusions contained herein.

FINDINGS

1. Based on the evidence, testimony, exhibits, and comments from the public, Applicant, and Town staff, the Basalt Town Council Finds and determines that the

proposed use does not violate any standard of the Land Use Code.

2. The proposed market will add vitality to the downtown core as deemed an important Town goal in the 2007 Master Plan and reiterated in the Our Town Planning Master Plan Amendment.

CONCLUSIONS

Based on the evidence, testimony, exhibits, and comments from the public, Applicant and Town Staff, the Basalt Town Council hereby grants approval for the Basalt Sunday Market subject to the conditions contained herein and within **Exhibit A**.

READ AND ADOPTED by a vote of __ to __ on _____, 2016.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

By: _____
Pamela K. Schilling, Clerk

Exhibit A

1. Applicant shall adhere to all material representations made in, or in connection with this application.
2. All vendors for the 2016 season shall be selected by the Sunday Market Board.
3. All vendors must comply with the Rules and Regulations adopted by the Sunday Market and must have a current Town of Basalt business license as well as all other applicable documentation needed to sell goods within the Town limits (i.e. liquor license if necessary).
4. All vendors must have a current proof of insurance that complies with the requirements stated in the Rules and Regulations of the Basalt Sunday Market.
5. The Sunday Market shall never block access to the Twin Rivers Apartment complex or extend into (or block) the main thoroughfare of Midland Avenue. Emergency access shall in no way be inhibited.
6. The Town Manager has the authority to address any issues that arise during the market season.
7. Pedestrian access to Saxy's commercial space shall not be blocked. All reasonable efforts will be made to accommodate the flow of pedestrians to the Saxy's entrance as a part of the 2015 Sunday Market.
8. Pedestrian access to the entrance of the ArtBase shall not be blocked.
9. The Sunday Market shall comply with the requirements of the Basalt Fire Protection District and the Basalt Police Department.
10. The Sunday Market shall always have at least two operable fire extinguishers near the site and other fire extinguishers as required by the Basalt and Rural Fire Department. Any vendors with commercial cooking that produces "grease laden vapors" must have a portable Class K within 30 feet. The on-site Market Manager shall be aware of the location of the two fire extinguishers during each event throughout the season. All fire extinguishers shall have been serviced and inspected within the last 12 months per International Fire Code section 906.2 and NFPA 10.

11. The use of electricity shall be coordinated with and approved by the Public Works Department. The Town is in favor of the Sunday Market exploring sustainable power sources such as solar.
12. The Sunday Market shall be responsible for trash collection and removal. All debris and equipment shall be cleared from the site by nightfall on the same day as the market.
13. The Sunday Market shall comply with the event standards set forth in the Town's Green Events Checklist (attached) or the conditions established in this resolution - whichever is more restrictive. The Town Manager may interpret or modify requirements of the Green Event Checklist for the Sunday Market as deemed appropriate.
14. The sale of bottled water shall not be permitted at the Sunday Market. The Market is encouraged to utilize the recently installed water station where patrons can fill reusable containers with water from the Town's water supply. The Sunday Market and its vendors are permitted to sell reusable water bottles.
15. The Sunday Market shall provide portable toilets on site upon the request of the Town.
16. No vegetation shall be removed or modified for the purpose of accommodating the Sunday Market without consent of the Public Works Director.
17. The Market Manager shall provide financial reports and banking statements of the Sunday Market to the Town upon request by Staff.
18. This approval is valid from Sunday, June 12 through Sunday, September 25, 2015. Additional days shall be approved by motion by the TRC. Approval of the Sunday Market for following years shall require subsequent application and review by the Town.
19. Any substantial changes to the operation of the Sunday Market that are outside the parameters of this approval must be considered and approved by the Basalt Town Council. Insubstantial changes may be authorized by the TRC. The Sunday Market may appeal a decision of the TRC to the Town Council.
20. If the Sunday Market is found to be in violation of this approval, it can be revoked at any time at the discretion of the Town Manager.

Town of Basalt - Green Events Checklist

Special Event Permit applications for public special events within the Town of Basalt shall address the following:

Event Staff & Volunteers

- Identify an “Event Organizer” who will be responsible for compliance with green event standards and conditions.
- Event staff and volunteers shall be trained to comply with green event standards and conditions, and to effectively educate attendees about green initiatives being implemented at the event.

Education & Sponsorship

- Educational materials shall be displayed to inform attendees about the event’s green initiatives.
- Identify event sponsors and highlight their environmental policies and initiatives at the event, if applicable.

Materials & Supplies

- Promotional items distributed during the event shall be made from recycled materials, or shall be recyclable, reusable or consumable.
- Printed materials for the event shall, at a minimum, be printed on 50% post-consumer recycled content paper.
- The Event Organizer shall provide vendors with a resource list identifying sources for eco-friendly event supplies.
- Use of plastic shopping bags and Styrofoam containers shall be prohibited. If necessary, paper bags and containers containing post-consumer recycled content may be used.

Waste Collection, Recycling & Composting

- Consolidated waste collection stations shall be provided at the event, including separate receptacles for trash, recyclables and compostables.
- Waste collection station monitoring by event staff or volunteers is required.

Food & Beverage

- Vendors offering bottled water shall be required to display information concerning the environmental impacts associated with bottled water products.
- The Event Organizer shall encourage the use of reusable linens, cutlery and dishes.
- Any single-use food-service products shall be compostable or recyclable.

Transportation

- Attendees shall be provided with information about local bus schedules and encouraged to use public transit, carpooling, biking or walking to the event in all promotional materials.
- A “no idling” policy shall be enforced for all staff, volunteers and attendees.

Wrap-Up & Evaluation

- A post-event evaluation and de-briefing report shall be provided to the Town within 14 days of the event. The report shall include any pertinent observations, notes and data that may help reduce the environmental impacts of similar events to be held in the future.

TOWN OF BASALT Consent Item	Date: May 10, 2016 From: James Lindt, Assistant Planning Director
	Town Manager Review: MS 5-6-16

SUBJECT: Consideration of Resolution No. 18, Series of 2016, that would authorize Lisa Fountain to conduct a for-profit, outside workout class on the Willits Rugby/Soccer Field two (2) times per week from May through October from 9 AM to 10 AM on Tuesdays and 10 AM to 11 AM on Saturdays.

RECOMMENDATION: Staff recommends that Council approve the attached resolution.

DETAILS: Staff has received a proposal from Lisa Fountain to conduct a for-profit, outside workout class on the Willits Rugby/Soccer Field two (2) times per week from May through October. As it is a for-profit endeavor, the Town Council may approve of a waiver from the twelve (12) occurrence limitation by passage of a resolution pursuant to Town Code Section 6-14, *Temporary Vendor Use of Public Property and Right-of-Way*.

The main consideration that Staff has identified related to the proposed use is that other fitness businesses may feel that use of the Town's park provides an unfair advantage. At present, nothing would prevent other fitness businesses from also requesting the ability to use the Town's parks on a case-by-case basis. It's important to note that the Applicant is a contract employee of a local gym but this class is being proposed by the Applicant independent of the gym with which she is employed.

A Special Event Activity Permit was approved by the Council for this activity last year and Town Staff experienced no problems with the activity.

RECOMMENDATIONS FROM OTHER BOARDS: The P&Z is not required to make a recommendation on requests for temporary vendor licenses.

RELATED TOWN STATUTE AND TOWN ACTIONS: Town Code Section 6-14, *Temporary Vendor Use of Public Property and Right-of-Way*; Town Council Policy 104 and Resolution No. 13, Series of 2013 regarding special events

ATTACHMENTS: A) Draft Resolution; B) Application

A) Draft
Reso.

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
USE OF THE WILLITS RUGBY/SOCCER FIELD FOR A FOR-PROFIT,
FITNESS CLASS**

**Town of Basalt, Colorado
Resolution No. 18
Series of 2016**

RECITALS

Whereas, Lisa Fountain has requested a Special Event Activity Permit and a waiver from the limitation that for-profit use of a Town Park is limited to twelve (12) times per year in order to operate a for-profit, fitness class on the Willits Rugby/Soccer Field for up to two (2) times per week, May through October.

Whereas, Town Code Section 6-14, *Temporary Vendor Use of Public Property and Right-of-Way*, authorizes the Town Council to waive the limitation that one entity can operate for-profit events or vend on the Town's property at most twelve (12) times per year.

Whereas, at their regular meeting on May 10, 2016, the Town Council considered the Applicant's request, comments from Town Staff, and public comments.

Whereas, the Basalt Town Council finds, determines and concludes that passage of this resolution is necessary to protect the health, safety, welfare and quality of life for the citizens of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN
OF BASALT, COLORADO:**

Section 1. That the Town Council approves Lisa Fountain's use of the Willits Rugby/Soccer Field for a for-profit fitness class up to two (2) times per week, from May 11, 2016 to October 31, 2016, subject to the following conditions:

1. If there is an organized group or team wanting to use the field for a game or practice at the same time as the fitness class, the class shall allow the organized group or team to use the field and the class may operate on the side of the field.
2. As proposed in the Application, the class shall be held between the hours of 9 AM to 10 AM on Tuesdays and 10 AM to 11 AM on Saturdays.
3. There shall be no amplified music (i.e. no music from stereos, no boom boxes, etc.) as part of the class.

4. In the event that the Town receives complaints, the Applicant shall work with the Town Staff to resolve such complaints.
5. The Town Manager may approve of minor amendments to the approvals granted herein. Additionally, the Town Manager, at his sole discretion, reserves the right to revoke the Special Event Activity Permit if problems arise.

RESOLUTION NO. 18, SERIES OF 2016, IS HEREBY ADOPTED by a vote of ___ to ___, this 10th day of May, 2016.

TOWN OF BASALT, COLORADO

ATTEST:

by _____
Jacque R. Whitsitt, Mayor

Pamela K. Schilling, Town Clerk

To be filled out by the Town
Filed: ___/___/___

Town of Basalt

Special Event Application

Contact Information

Name of Event Organizer (Primary): Lisa Fountain
Phone number: 435-659-5196
Fax number:
E mail (if available): fountain.lisa@gmail.com
Mailing Address: Po Box 3220, Basalt CO 81621

Name of Event Organizer (Secondary):
Phone number:
Fax number:
E mail (if available):
Mailing Address:

Event Information:

Name of event: Power Hour

Date(s) of event: May 10 – October 31, Tuesdays and Saturdays

Location of event: Willits Rugby Field

Times of the event: 9:00am Tuesdays and 10am Saturdays

Description of event: Power Hour is an exercise class that allows moms to bring their children with them. We cater to moms that may not be able to afford/find childcare but who also want to benefit from staying strong and healthy. We create a sense of "momraderie" – an environment where moms can meet one another, create friendships, and get/stay fit. Attendees will bring their own water and will also be responsible for their own children.

Expected number of patrons: 5-15

Anticipated number of vendors: None

Is on-site preparation of food proposed? Yes X No

Is alcohol distribution or consumption proposed? Yes X No

If alcohol distribution is proposed, have you applied for a Town of Basalt Liquor License?

Yes No

Is there a charge to participate in the event? Yes No

If so, how much? \$8/class

Is the event being organized by the non-profit entity? Yes No

How will the event benefit the community? Power Hour is a healthy resource for moms that promotes healthy living and social interaction which is vital for new and seasoned moms. Healthier and happier moms means healthy and happy children which contributes to a healthy community overall. Moms will also be encouraged to meet up for lunch and /or coffee at any one of the local businesses in Willits or downtown Basalt contributing to positive economic growth in the community.

Is closure of streets or parking requested? Yes No

If closure is requested, please describe location of requested closure: _____

Are tents proposed? Yes No

Is the installation of stakes in a Town Park proposed? Yes No (if so, a \$200 refundable deposit shall be required)

Are Town security resources requested? Yes No

Application Submittal Items:

Event Site Map (Include the location of the following: toilet facilities, hand washing facilities, vendor locations, band or DJ, trash facilities, temporary fencing, event signage, tents with dimensions)

Written Consent from Property Owner (if event is proposed on private property)

Proof of Liability Insurance

Emergency Access Plan

- _____ Schedule for delivery and pick-up of portable toilet and handwash facilities
- _____ Plan for Distribution of Drinking Water to Patrons
- _____ Written Responses as to the Event's Compliance with the Town's Green Events Checklist
- _____ Copy of Completed Liquor License Application (if alcohol is proposed to be sold or distributed)
- _____ Completed Town Park Use Form (if use of a Town Park is requested)
- _____ Parking and Transportation Plan (Include number and location of traffic control volunteers)

SUBJECT: Check in on the Our Town Planning Process

RECOMMENDATION: Council Discussion and Direction

DETAIL:

The purpose of this agenda item is for the Council to discuss the direction provided previously by the Council to Staff and the Council's boards to ensure that Staff and the Council's boards are reflecting the Council's goals.

The Council has been setting policy and been giving direction to Staff, its financial advisor and Committees on the Our Town Planning (OTP) Project by adopting a number of resolutions beginning in February of 2014 when the Council approved a resolution approving a framework and budget calendar for the "Our Town" Planning Process. So far in 2016, the Council approved two resolutions regarding the OTP Project, Resolution Nos. 04 and 09, Series of 2016. Staff concluded that the statements in these two resolutions could be used as the starting point for the new Council to check in on whether the Council still supports these statements. These two resolutions are the accumulation of a number of prior decisions and these resolutions have set in motion a number of assigned work tasks to prepare the Council for a significant Council discussion on **Tuesday, July 12th**. The significance of the July 12th date was the Council needs to decide whether it is going to ask the voters to approve a bond either for land acquisition and/or for park improvements so that it can complete the necessary steps in order to be placed on the November 1st ballot.

Once the Council has a more collective idea of what it wants its Staff and boards to be doing, then a new resolution can be crafted by the Council setting forth an action plan for the Our Town Planning Area.

Resolution No. 04, Series of 2016, adopted on February 9th, was a response to the Citizen Petition reviewed by the Council at its January 26th meeting concerning the purchase of the CDC property.

Resolution No. 09, Series of 2016, adopted on February 23rd, provided direction to the P&Z, Lowe Enterprises and the Roaring Fork Community Development Corporation (CDC). This is the resolution which encouraged Lowe Enterprises, which has the option to purchase the property from the CDC (owner), to prepare and submit a land use application that includes up to 55,000 square feet of building space (not including parking) on the area shown as building on the exhibit included in the resolutions.

These resolutions are attached along with update sheets showing the status of the items.

Timing:

It is not essential that the Council complete this discussion at this Council meeting. However until we hear differently, POST and Staff will continue per the direction outlined in the prior resolutions. The P&Z would like some feedback about whether they should proceed before continuing with the public hearing and adoption process on the Amended CSC Zone District.

Related Town Statute and or Town Actions: DAAC Report, 2014 Town of Basalt "Our Town" Planning Survey; Town Council Resolution No. 03, Series of 2015 outlining the next steps in the Our Town planning process; 2015 Basalt Council Work Plan; Resolution No. 19, Series of 2015 identifying the potential buildings and park plan; Resolution No. 34, Series of 2015 providing additional direction to the P&Z and others; Resolution No. 54, Series of 2015 Adopting the Our Town Planning Master Plan Amendment; Resolution No. 55, Series of 2015

also providing additional direction to P&Z; Resolution No. 04, Series of 2015, Responding to the Citizen Petition reviewed by the Council at its January 26, 2016 Council Meeting Concerning Purchase of the CDC property; Resolution No. 09, Series of 2016 providing direction to Staff, P&Z, POST, Lowe and the CDC

Attachments: Updates on Resolutions Nos. 4 and 9, Series of 2016. Copies of those resolutions. Basalt River Park Site Plan and Revised Wetland Garden

Other information: Additional information can be obtained by reviewing the P&Z packet materials for its January 19, February 2, and February 23 meetings found on the Basalt website <http://www.basalt.net/AgendaCenter> and on the OTP project website www.ourtownplanning.org.

Resolution No. 04, Series of Series of 2016

Update - ACTIONS are shown in Blue.

- Section 1.** The Town Council directs staff to schedule the necessary meetings to enable the P&Z and Town Council to consider adopting zoning district regulations for the CDC property in accordance with the schedule presented at the Council's February 9th meeting. **P&Z had been meeting per the schedule presented on February 9th up to right before the election. The Town Council decided that it did not make sense for the outgoing Council to meet with the P&Z jointly on March 29th. Instead the new Council was invited to attend the P&Z's meeting on May 3rd where the P&Z presented its amended CSC Zone District for the four Our Town Planning Properties. The P&Z would like some feedback about whether they should proceed before continuing the public hearing and adoption process on the Amended CSC Zone District. (Susan Philp and P&Z)**
- Section 2.** The Town Council directs POST and Staff to continue to prepare park plans and construction documents based on the configuration of park, and proposed building area included in the Our Town Master Plan Amendment and Town Council Resolutions Nos. 19, 34 and 55 which frames the development of a park from the downtown to the Roaring Fork River. **POST continues to work based on the conceptual design they presented at the February 9th meeting. The site plan for the Basalt River Park is attached. POST held an Open House on March 14th. On April 13th POST approved the conceptual plans for the wetland garden located between the Conservancy and Old Pond Park. Harry Teague's firm will be talking to POST regarding the stage and pavilion structure with restrooms at POST's next meeting. DHM is scheduled to present the costs for the Park improvements, including the stage and pavilion, to the Council at its July 12th meeting. (Susan Philp and POST)**
- Section 3.** The Town Council directs Staff and its Financial Advisor to work with the CDC and the CDC's Developer to develop a strategy to enable the Town Council to consider acquisition of the park area shown in Resolution No. 55, Series of 2015 for a public park, and to allow a reasonable amount of development on the remaining CDC Property to meet the Town's goals as outlined in the Our Town Master Plan Master Plan Amendment. **Town Staff continues to work with Ehlers, CDC and CDC's Developers (Bruce Kimmel, Judi Tippetts, and Mike Scanlon)**
- Section 4.** The Town Council finds that the public interest would be served by appraising the CDC property and identifying other financial considerations prior to any negotiations for purchase of all or any portion of the CDC property. **This is combined with Section 5, Section 6, and Section 7. Work has been undertaken by Town Staff on these items**

(Mike Scanlon and Judi Tippetts).

- Section 5.** As the CDC has affirmed that they purchased their property based on reliance on the then current Master Plan, the Town Council agrees that the appraisal should consider the Master Plan then in place, which is the 2007 Basalt Master Plan. **See above Section 4.**
- Section 6.** The Town Council directs the Town Manager to outline the conditions that should be considered by the appraiser in preparing the appraisal. **See above Section 4.**
- Section 7.** The Town agrees to pay for the appraisal, referenced herein. Nothing prevents the CDC from preparing its own appraisal for the Town Council's consideration. **See above Section 4.**
- Section 8.** A referendum election would be necessary in order to approve public financing for purchase of all or a portion of the property. **This would be consistent with the Citizen's Petition.**
- Section 9.** The Council directs Town Staff to work on a phasing, relocation and upgrade plan for the buildings currently located on the Lions Park Parcel. The Town has currently budgeted \$50,000 to begin this work. **This is underway with the project pieces broken into three parcel pieces (decision pieces) – Town Hall / Art Base / Chamber of Commerce. The ArtBase has been working on their plan for Lion's park per its Board's direction (Mike Scanlon and Judi Tippetts)**
- Section 10.** The Town Council directs the Town Manager to take action to schedule the activities outlined in this resolution as soon as practical and no later than July 12, 2016 to enable the Town Council to consider adopting an ordinance placing a ballot question on the November election to address financing the acquisition of all or a portion of the property. **THIS AWAITS EVERYTHING ABOVE.**
- Section 11.** The Town Manager is directed to work with the petitioners to identify petition issues that may have been missed in this Resolution. The Town Council will continue to provide opportunities for the public to provide input before the Council makes any final zoning and financial decisions on development for the CDC property or for any of the other properties outlined in Resolution Nos. 19, 34, and 55, Series of 2015. **Based on the feedback made by Cathy Click, representing the Citizen Petitioners, two options were made for the physical model to represent their ideas. The second version more clearly represents what the petitioners were envisioning; this is a 43,560 square foot building program, in two stories, with community uses and .3 acres more of park than represented by the Council's direction. Packet materials for the P&Z's meetings are being forwarded to Click and are available on the Town's website. The official public hearing process was scheduled to start on May 3rd, but it was continued to allow opportunity for Council feedback. (Susan Philp).**

Resolution No. 09, Series of Series of 2016

Update - ACTIONS are shown in Green.

- Section 1.** The Town Council encourages Lowe Enterprises (Developer), which has the option to purchase the property from the CDC (Owner), to prepare and submit a land use application that includes up to 55,000 total square feet of building space (not including parking) on the area shown as building on **Exhibit A**. **Conversations were held with Lowe who responded positively to a program including a 40,000 square foot condominium hotel, including a restaurant and a couple affordable housing units, and 15,000 square feet of office. Potentially Lowe could be interested in other uses if the Town conveyed what it desired and Lowe could financially make it work for them.**
- Section 2.** The Town Council accepts the P&Z recommendation to modify the Community Serving Commercial (CSC) Zone District for application to all four Our Town Planning (OTP) Parcels generally as described by the P&Z and presented in the packet materials for the February 9, 2016 Council meeting and guidance provided to date by the Council. **The P&Z has been working diligently in preparing amendments to the CSC Zone District and are now waiting for a check in with the Council to make sure they are doing what the Council wants.**
- Section 3.** The Town Council directs the P&Z to prepare zoning which would permit 2 ½ stories on the CDC Building Parcel shown on **Exhibit A** as seen from Two Rivers Road and would define volumetric limitations and architectural character for the parcel in sufficient detail to enable the public, Developer and Owner to have a good understanding of what a successful land use application might include. The Town Council could provide further input on acceptable maximum allowed square footages at any time during the planning or zoning process. **The P&Z's amended CSC Zone District satisfies this direction.**
- Section 4.** This resolution does not reflect any land use approvals for the development of the property. Neither the Town, Lowe or CDC is bound by the direction contained within this resolution. **Information. No action necessary.**
- Section 5.** Nothing prevents the authorized entity of the CDC from submitting a land use application for approval of a different zone district or a Planned Unit Development Application for the property under the Basalt Municipal Code or even requesting a new zoning district for the Town's review as the CDC did earlier after it purchased the property. Lowe and the CDC in their discretion may seek approval of more or less development than recommended by the Council in Section 1 of this resolution. Such application would be reviewed in accordance with the Basalt Municipal Code and Master Plan. **Information. No action necessary.**

Section 6. The Town Council will provide opportunities for the public to provide input before the Council makes any final zoning and financial decisions on development for the CDC property or for any of the other properties outlined in Resolution Nos. 19, 34, and 55, Series of 2015 and Resolution No. 4, Series of 2016. **Information. No action necessary.**

TOWN OF BASALT COUNCIL DISCUSSION ITEM	Date: May 10, 2016 From: Mike Scanlon, Town Manager
	Town Manager Approval: MS approved 5-6-15

SUBJECT: Contract with Oldcastle SW Group, Inc. dba United Companies for the construction of the Basalt Avenue Underpass.

RECOMMENDATION: Approve a contract with Old Castle SW Group, Inc. for the construction of the SH-82 Basalt Pedestrian Underpass project.

DETAIL:

The purpose of this agenda item is for the Town Council to approve a contract with Old Castle SW Group, Inc. for the construction of the SH-82 Basalt Pedestrian Underpass project.

In 2004 as part of a town-wide planning effort the SH-82 Basalt Pedestrian Underpass was identified as the #2 priority in the Town of Basalt. Over the last year Town Staff working with a collection of partners including; Colorado Department of Transportation (CDOT), Roaring Fork Transportation Authority (RFTA), Pitkin County Open Space and Trails (OST), Elected Officials Transportation Committee (EOTC) and Pitkin County to put together the dollars needed to build this project. The cost of construction for this project has grown from the original estimate of about \$3,100,000 to the current construction cost of \$7,140,000.

There are three attachments related to this Item.

Attachment A – The SH-82 Basalt Pedestrian Underpass Budget

Attachment B – The CDOT Concurrence Letter that authorizes us to enter into Contract.

Attachment C – Contract with Oldcastle SW Group Inc. dba United Companies **THE TOWN COUNCIL WILL BE APPROVING THIS CONTRACT.**

In addition, to the contract under review we have received payment and performance bonds and certificates of insurance related to the coverage required by the contract.

Note on multiparty highway project contracts – Should the Town Council decide to make changes in this contract it will need the concurrence of at least two additional parties – Old Castle SW Group, Inc. and the Colorado Department of Transportation (CDOT). Depending on the level of changes introduced CDOT may be required to seek the approval of the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT). There is a reason these contracts are 65 pages long they attempt to address every local, state and federal concern that can be anticipated in the construction of highway infrastructure.

Related Town Statute and or Town Actions: Multiple Town actions in the past two years including the acceptance of the lowest and best bid that was received and acted upon by the Town Council on March 22, 2016.

Attachment A

**SH-82 Basalt Pedestrian Underpass
Project No. TAP-M060-004 PCN 20284**

Project Revenues (Construction)

Funding Sources	Current Project Funding
CDOT=Colorado Department of Transportation	(1) \$ 2,280,500
OST= Pitkin County Open Space and Trails	400,000
EOTC=Elected Officials Transportation Committee	750,000
RFTA=Roaring Fork Transportation Authority	500,000
TOB=Town of Basalt -- Parks Open Space and Trails (POST)	2,969,500 (2)
PC= Pitkin County	240,000
Total	\$ 7,140,000

Project Expenses (Construction)

Expense Category	Current Budget
Construction Contract	\$ 6,232,801
Construction Engineering, Inspection, and Management (7.5%)	467,460
Contingency (7% of Construction Bid)	439,739
Total Construction Budget	\$ 7,140,000

(1) CDOT funding includes the following Budgeted Funds:

a. Regional Priority Projects (RPP) Federal Funds (82.79% of Participating Match)	\$ 827,900
b. Transportation Alternatives Program (TAP) Federal Funds (80% of Participating Costs)	216,000
c. RPP State Matching Funds (17.21% of Participating Costs)	172,100
d. Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act of 2009 State Funds (100% of Participating Costs)	800,000
e. Safe Routes to School (SRTS) (80% of Participating Costs)	264,500
TOTAL BUDGETED FUNDS	\$ 2,280,500

(2) Town of Basalt Funding will come 100% from our POST dollars using Certificates of Participation (COPs) to provide interim funding on a non-appropriation basis. This project ties up much of our POST Budget for the next 3-4 years.

Attachment B



COLORADO
Department of Transportation
Division of Project Support

Engineering Contracts

4201 East Arkansas Avenue
Denver, Colorado 80222
Telephone: (303) 757-9297
Facsimile: (303) 757-9868

TAP M060-004
SH-82 Basalt Pedestrian Underpass
Project Code 20284

April 13, 2016

Mike Scanlon
Town Manager, Town of Basalt
101 Midland Avenue
Basalt, CO 81621

Dear Mr. Scanlon:

The City's award of Project TAP M060-004 (20284) to Oldcastle SW Group, Inc. is approved based on my review of the request for concurrence, supported by a financial statement received April 12, 2016 and receipt of the following documents:

- CDOT Form 605, Contractors Performance Capability Statement
- CDOT Form 606, Anti-Collusion Affidavit
- CDOT Form 621, Assignment of Anti-Trust Claims and
- Documentation of conformance with CDOT DBE Contract Goal Policy.

Please be sure to include a copy of FHWA Form 1273 as part of your contract with Oldcastle SW Group, Inc. Your cooperation in this matter is appreciated.

Sincerely,

Marci Gray
CDOT Award Officer

cc: Brian Killian, R-3
Region EEO Officer, R-3
Gray, HQ-Construction Contracts
Yehdego/Ngo, HQ-Accounting
Bumpers, Civil Rts.
Central Files

Attachment C

CONSTRUCTION AGREEMENT FOR SH-82 BASALT PEDESTRIAN UNDERPASS

THIS CONSTRUCTION AGREEMENT is dated as of the ____ day of _____, 2016, by and between Town of Basalt, Colorado, a body corporate and politic, acting by and through its Town Council (hereinafter called "Town" or "Owner") whose address for purposes hereof is 101 Midland Avenue, Basalt, CO 81621, and Oldcastle SW Group, Inc. dba United Companies a Corporation licensed to work in the State of Colorado (hereinafter called "Contractor") whose address for purposes hereof is 2273 River Road, Grand Junction, CO 81505.

Owner and Contractor, in consideration of the mutual covenants herein set forth, agree as follows:

ARTICLE 1 – THE PROJECT AND THE WORK

- 1.1 The construction project which is the subject matter hereof is generally described as the SH-82 Basalt Pedestrian Underpass Project located on SH-82, approximate Mile Marker 23.1 adjacent to the Basalt Avenue intersection (hereinafter the "Project"). Contractor shall supply and perform all work to complete the Project as specified in the Contract Documents and in accordance with the approved design plans and specifications ("Work").
- 1.2 This Project is supported by the State of Colorado acting by and through the Department of Transportation ("CDOT" or "State") and is funded by Owner and the Federal Highway Administration ("FHWA").
- 1.3 Owner shall be entitled to perform inspection and testing activities, approve sources of materials, perform required plant and shop inspections all as more fully set forth herein.
- 1.4 A more complete description of the Project and a description of the applicable Project site (the "Site") is provided by the Contract Documents.
- 1.5 Capitalized terms that are not defined in this Agreement shall have the meanings ascribed to them in the General Conditions and (or) the other Contract Documents as applicable.
- 1.6 The intent of the Contract Documents is to include all items reasonably necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any one shall be binding as if required by all. Based on Contractor's careful review of the Contract Documents, Contractor acknowledges that the Contract Documents require the construction of a completed Project in accordance with the terms hereof.
- 1.7 Contractor shall perform all the Work required by the Contract Documents or reasonably inferable therefrom, for the complete construction of the Project in accordance with the Contract Documents. Contractor shall provide and furnish all materials, supplies, equipment, tools, implements, all other facilities, and all other labor, supervision, security, transportation, utilities, storage, appliances and all other services as and when required for or in connection with the complete construction of the Project.
- 1.8 If the Work is taking place on property owned by other federal, state or local governmental entities, or a public utility or other third party, Contractor shall comply with any additional terms and conditions required by applicable law and (or) applicable permits.

- 1.9 Contractor shall perform with its own organization a minimum of thirty percent (30%) of the total Contract Price excluding identified specialty items.

ARTICLE 2 - OWNER'S REPRESENTATIVE

- 2.1 The Project is under the authority of the Town of Basalt Engineering Department, the Manager of which, or her designee, shall be Owner's liaison with Contractor with respect to the performance of the Work.
- 2.2 Contractor's representative is _____. Contractor's representative shall be a competent superintendent or supervisor who is employed by Contractor with full authority to direct performance of the Work in accordance with the Contract Documents, and is in charge of all construction operations regardless of who performs the Work. Contractor shall supply such other of its own organizational resources as Owner determines is necessary to assure the performance of the Contract.
- 2.3 Neither Owner's nor Contractor's representative shall be changed with less than ten (10) days prior written notice to the other party.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be completed and ready for final payment in accordance with the Contract Documents on or before **October 20, 2017** ("Contract Time").
- 3.2 Contractor shall employ all such additional labor, services and supervision, including such extra shifts and over time, as may be necessary to maintain and to achieve final payment in accordance with the Contract Documents on or before **October 20, 2017** all without an increase in the Contract Price.
- 3.3 Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving at a legal or arbitration hearing, the actual loss suffered by Owner if the Work is not substantially complete on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner as set forth in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011) and Standard Special Provisions for each day that expires after the time specified in paragraph 3.1 for completion until the Work is complete.

ARTICLE 4 - CONTRACT PRICE

- 4.1 Owner shall pay Contractor, for Contractor's performance of the Work under the Contract Documents, an amount **not to exceed \$6,232,801.25** ("Contract Price").
- 4.2 Notwithstanding anything in the Contract Documents to the contrary, the Contract Price (which is based in part upon unit prices) includes, without limitation, the entire amount of overhead and profit payable to Contractor in connection with the Work under the Contract Documents. Contractor shall not have the right to, nor shall it seek to recover, any additional compensation for

- overhead or profit. Unit quantities actually incorporated in the Project may be adjusted subject to the not to exceed Contract Price and in accordance with the Contract Documents. In no event shall the Unit prices set forth in Contractor's Bid Form be adjusted.
- 4.3 Contractor acknowledges that Owner is a tax exempt entity and that Owner has appropriated funds for this Project in a sum equal to or in excess of the Contract Price.
- 4.4 Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents.
- 4.5 Pursuant to the provisions of §24-91-103.6, C.R.S., and notwithstanding anything to the contrary contained elsewhere in the Contract Documents, no change order or other form of order or directive by Owner, and no amendment to this Agreement, requiring additional compensable Work to be performed which Work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for the original Agreement, shall be of any force or effect unless accompanied by a written assurance by Owner that lawful appropriations to cover the costs of the additional Work have been made or unless such Work is covered under a remedy-granting provision in the Agreement.
- 4.6 Town of Basalt is a governmental entity and all obligations beyond the current fiscal year are subject to funds being budgeted and appropriated. Specifically, notwithstanding anything to the contrary contained in this Agreement, Owner shall have no obligations under this Agreement, nor shall any payment be made to Contractor in respect of any period after December 31 of each calendar year during the term of this Agreement, without an appropriation therefore by the Owner in accordance with a budget adopted by the Town Council in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. §29-1-101 *et seq.*), and the TABOR Amendment (Constitution, Article X, Sec. 20).

ARTICLE 5 - PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed as provided in the General Conditions.

- 5.1 **PROGRESS PAYMENTS:** Owner shall make monthly progress payments on account of the Contract Price and as provided in the Contract Documents. All progress payments will be on the basis of the progress of the Work. Owner shall have the right to request and inspect supporting documentation for progress payments, including but not limited to receipts and invoices evidencing payments of charges associated with the Work.
- 5.2 The period covered by each Application for Payment shall be one calendar month beginning on the first of each month and ending on the last day of the month.
- 5.3 Each Application for Payment shall be based upon the unit prices and percentage of completion as set forth in the Contract Price and otherwise in accordance with the Contract Documents. Each Application for Payment shall show actual quantities incorporated into the Project for each portion of the Work as of the end of the period covered by such Application for Payment.
- 5.4 Prior to Completion, Owner shall authorize partial payments at the end of each calendar month or as soon thereafter as practicable if Contractor is satisfactorily performing the Agreement. Progress payments will be in an amount equal to:

- 95% of the calculated value of the Work completed. The withheld percentage of the Contract Price shall be retained until the Agreement is completed satisfactorily and finally accepted by the Owner.
- 5.5 Progress payments and retained funds shall occur in compliance with the General Conditions attached hereto and C.R.S. §24-91-103.
- 5.6 In taking action on Contractor's Applications for Payment, Owner shall be entitled to rely on the accuracy and completeness of the information furnished by Contractor and shall not be deemed to represent that (i) Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted by Contractor; (ii) Owner has made exhaustive or continuous on-site inspections of the Work; or (iii) Owner has made examination to ascertain how or for what purposes Contractor has used amounts previously paid on the Contract Price.
- 5.7 FINAL PAYMENT: Upon final completion and acceptance in accordance with the General Conditions, Owner shall pay the remainder of the Contract Price. The final payment shall not be made until after final settlement of this contract has been duly advertised at least ten days prior to such final payment by publication of notice thereof at least twice in a public newspaper of general circulation published in Town of Basalt, and the Town Council has held a public hearing thereon and complied with C.R.S. §38-26-107. Final payment shall be made in accordance with the requirements of the aforesaid statute. Owner shall make a final settlement in accordance with C.R.S. 38-26-107 within sixty days after the contract is completed satisfactorily and finally accepted by Owner.
- 5.8 Owner may withhold payments due to Contractor, to such an extent as may be necessary to protect Owner from loss, because of defective work or material not remedied or the failure of Contractor to carry out the Work in accordance with this Agreement.
- 5.9 Notwithstanding the fact some of the Work may occur on property owned by third parties that are not governmental entities, the Contractor acknowledges and agrees that payment shall be made in accordance with C.R.S. 24-91-103 and C.R.S. 38-26-107 and hereby waives its right to lien the property. Contractor shall include the language of this paragraph 5.9 in any subcontracts for the Project.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 6.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress, or performance of the Work.
- 6.2 Contractor has made, or caused to be made, examinations, investigations, and tests and studies of such reports and related data as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are, or will be required by Contractor for such purposes.

- 6.3 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 6.4 Contractor has given Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.
- 6.5 In performing the Work under this Agreement, the Contractor acts as an independent contractor and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as errors and omissions insurance. The Contractor, as an independent contractor, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the Contractor are not and shall not become employees, agents or servants of the Owner or the State because of the performance of any Work by this Agreement.
- 6.6 Contractor represents and warrants that it holds a license, permit or other special license, as required by law, to perform the Work required under the Contract Documents and shall keep and maintain such licenses, permits and special licenses in good standing and in full force and effect at all times while Contractor is performing the Work under the Contract Documents.
- 6.7 Contractor shall maintain insurance as set forth in the General Conditions. Before permitting any of his subcontractors to perform any Work under this Agreement, Contractor shall require each of his subcontractors to procure and maintain such insurance as set forth in the General Conditions.
- 6.8 Contractor shall comply with and is responsible for compliance by its subcontractors, lower tier subcontractors and/or service providers with FHWA 1273 and Contractor shall physically include that FHWA 1273 verbatim in all subcontracts, regardless of tier and in any purchase order, rental agreement or service agreement as required by 23 C.F.R. 633.102(e). FHWA 1273 is part of the Contract Documents and is attached hereto and incorporated herein as Exhibit E.
- 6.9 Standard Special Provisions relating to equal employment opportunity, affirmative action wage decisions are part of the Contract Documents and shall be included in all subcontracts.
- 6.10 Contractor shall supply Owner and the State with all lower tiered subcontract agreements and purchase orders.
- 6.11 Contractor shall be responsible for reserving the right for itself and for Owner, the State and their employees and agents, the right to inspect its subcontracts to determine compliance with Contract Documents.
- 6.12 Contractor shall allow Owner, the State and their respective employees or agents to conduct random checks with onsite subcontractor employees to determine if they are paid according to Contract Documents and to verify that no discriminatory employment practices are present.
- 6.13 Contractor shall submit all documentation requested by Owner, the State or their respective employees or agents, such as meeting minutes and rosters and complaint procedures. Contractor must assure that all employees, including subcontractor employees, have been informed of required wages, non-segregated facilities, training opportunities and potential hiring opportunities for women and minorities.

- 6.14 To ensure dissemination of policies relating to Equal Employment Opportunity, the Contractor must have a meeting prior to the Work and then not less than once every six months. The Contractor shall notify Owner and State of the date, time and location of the meeting.
- 6.15 Contractor shall be responsible for certifying that all subcontractors or material suppliers do not have segregated facilities in accordance with applicable law.
- 6.16 Contractor is responsible for compliance with the Contract Documents for all subcontractors and shall complete all forms required by the Owner, State and FHWA.
- 6.17 Contractor shall comply with all civil rights and labor requirements required by CDOT including project bulletin board and pre-construction packet requirements. Contractor shall process CDOT Form 205- Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor and submit to Owner or CDOT as required. The Contractor is responsible for providing a main bulletin board at the Project site that is accessible to all employees. The bulletin board must contain the Equal Employment Opportunity policy and other documents required by the Contract Documents. Posters must be in English and Spanish, if applicable and checked frequently to assure documents are legible. Should any documents become missing or faded, the Contractor is responsible for replacement.
- 6.18 The parties agree that the Davis-Bacon Act applies to the Work being performed by Contractor and sub-contractors. Contractor and any subcontractor shall comply with the Davis-Bacon Act and reporting requirements thereunder and as supplemented by the applicable Code of Federal Regulations, and shall be responsible for obtaining and supplying any required forms or other information. Contractor shall insert a clause containing the terms of this section 6.18 in all contracts or subcontracts in excess of \$2,000.00.
- 6.19 Contractor and its subcontractors and consultants shall at all times during the term of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations as they currently exist or may hereafter be amended. A listing of certain federal and state laws, regulations and rules that may be applicable are described in Exhibit C which is attached hereto and incorporated herein by reference. Exhibit C shall be incorporated in all subcontracts.
- 6.20 Contractor shall comply with the Americans with Disabilities Act ("ADA") and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects."
- 6.21 Contractor shall comply with Title VI of the Civil Rights Act of 1964, as amended, which provides that no person shall on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Contractor shall insert a clause containing the terms of this section in all contracts or subcontracts.
- 6.22 Contractor shall meet the Quality Control requirements of the FHWA/CDOT Stewardship Agreement.
- 6.23 All Work shall be performed in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Action of 1969 (NEPA) as applicable.

- 6.24 Contractor shall comply with Disadvantaged Business Enterprise (DBE) Goals applicable to this Project.
- 6.25 Contractor shall comply with On-The-Job Training Goals applicable to this Project.
- 6.26 Contractor shall comply with any reporting requirements related to Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273.
- 6.27 Contractor shall cooperate and participate as may be required in Equal Employment Opportunity and Labor Compliance Verification Employee Interviews and completion of CDOT Form 280 and cooperate and complete as necessary CDOT Form 205-Sublet Permit Application for each subcontractor.
- 6.28 Contractor shall cooperate and participate as may be required in monitoring DBE Participation to ensure compliance with Commercial Useful Function Requirements and shall cooperate with or conduct interviews as may be required when Project utilizes on the job trainees and will complete or participate as may be required with CDOT Form 200-OJT Training Questionnaire.
- 6.29 Contractor shall comply with all payroll certification requirements.
- 6.30 Contractor shall be responsible for submitting FHWA Form 1391.
- 6.31 Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement on the basis of race, color, religion, national origin, sex, sexual orientation, ancestry, physical handicap, age, political affiliation or family responsibility. Contractor shall insert a clause containing the terms of this section 6.31 in all contracts or sub-contracts that exceed \$10,000.00.
- 6.32 Due to the involvement of federal funding for this Project, the Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3). Contractor shall insert a clause containing the terms of this section 6.32 in all contracts or sub-contracts.
- 6.33 Contractor agrees to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall insert a clause containing the terms of this section in all contracts or sub-contracts in excess of \$2,000.00.
- 6.34 Contractor agrees to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Air Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). Contractor shall insert a clause containing the terms of this section in all contracts or sub-contracts in excess of \$100,000.00.

- 6.35 Contractor agrees to comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).
- 6.36 Contractor agrees to comply with all requirements concerning Disadvantaged Business Enterprise applicable to the Project. Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used for subcontracts when possible.
- 6.37 The State will perform a final project inspection of the Work as a quality control/assurance activity but the same shall not relieve Contractor of its obligations under the Contract Documents. Further, Contractor shall participate as requested by Owner, in any final inspection and Project close out process.
- 6.38 Contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation and shall provide all safeguards, safety devices, and protective equipment and shall take any other actions reasonably necessary to protect the life and health of the persons working at the site of the Project and the safety of the public and to protect the property in the performance of the Work.
- 6.39 Contractor shall be responsible for posting any notice required by 23 CFR 635.119 concerning false statements.
- 6.40 Contractor shall require language of certification for federal-aid which is attached hereto as Exhibit F in all subcontracts which exceed \$100,000.
- 6.41 Buy American requirements shall apply as set forth in the Contract Documents.

ARTICLE 7 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement are made a part hereof, and consist of the following:

- 7.1 This Agreement and documents referred to in the Agreement as being part of the Contract Documents.
- 7.2 Contractor's Bid Form attached hereto and incorporated herein as Exhibit A.
- 7.3 Bid Documents attached hereto as Exhibit B and the CDOT forms required to be submitted by Contractor with its Bid.
- 7.4 "Standard Specifications for Road and Bridge Construction", Colorado Department of Transportation, State of Colorado, 2011.
- 7.5 "Colorado Standard Plans, Colorado Department of Transportation, M & S Standards" 2012.
- 7.6 Plan Set consisting of:
SH-82 Basalt Pedestrian Underpass (Federal Aid Project No. TAP-M060-004, Construction Code No. 20284)

- 7.7 Special Provisions consisting of:
Project Special Provisions
Standard Special Provisions
- 7.8 Listing of federal and state laws, regulations and requirements Exhibit C.
- 7.9 Addendum No. 1 dated March 8, 2016
- 7.10 Performance, Labor and Material and Payment Bonds.
- 7.11 Notice of Award and, if any, Notice to Proceed.
- 7.12 General Conditions also sometimes referred to as General Provisions are attached hereto as Exhibit D and incorporated herein.
- 7.13 Any modification, including Change Orders, duly delivered after execution of Agreement.
- 7.14 FHWA 1273 is attached hereto and incorporated herein as Exhibit E.
- 7.15 Certification for Federal-Aid Contracts is attached hereto and incorporated herein as Exhibit F.

The parties acknowledge and agree that this Agreement shall supersede and control over any inconsistent or contrary provision in any other attachment or agreement. The order of precedence for other documents is as set forth in Subsection 105.09 of the Special Provisions. There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended, or repealed by an executed, written amendment to this Agreement.

ARTICLE 8 – BONDS

- 8.1 Upon execution of this Agreement, Contractor shall deliver to the Owner the bonds required by the Contract Documents, and, notwithstanding anything to the contrary contained in the Contract Documents, Owner shall have no liability or obligation hereunder unless and until the bonds have been so delivered.

ARTICLE 9- SUBCONTRACTS AND OTHER AGREEMENTS

- 9.1 Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts and (or) by other appropriate agreements with Contractor (individually a "Subcontract" and collectively "Subcontracts").
- 9.2 All Subcontracts shall conform to provisions of this Agreement, and shall comply with all applicable federal and state laws and shall provide that such Subcontracts shall be governed by the laws of the State of Colorado. By an appropriate written agreement, Contractor shall require the subcontractor to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all the obligation and responsibility which Contractor, by these Documents, assumes towards Owner. Said agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Contractor shall require each subcontractor to enter into similar agreements with its subcontractors. Contractor shall make available to each proposed

subcontractor, prior to the execution of the subcontract, the Contract Documents to which the subcontractor will be bound by this paragraph 9.2. Each subcontractor shall similarly make copies of such Contract Documents available to its subcontractors. Owner shall have the right to review and approve each form of Subcontract.

- 9.3 Contractor shall be responsible to Owner for the acts and omissions of its agents, employees, suppliers, subcontractors performing Work under a contract with Contractor and such subcontractors' lower-tier subcontractors, agents and employees.
- 9.4 Nothing contained in the Contract Documents shall be deemed to create any contractual relationship between any subcontractor of any tier and Owner.

ARTICLE 10 – MISCELLANEOUS

- 10.1 No assignment by a party hereto of any rights under, or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Notwithstanding the foregoing, Contractor agrees that the State, in its sole discretion, may direct Owner to assign to the State all of its right, title and interest under any terminated contracts or agreements and Contractor hereby consents to such assignment.
- 10.2 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.3 Sections 105.22, 105.23 and 105.24 of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011) shall be of no force and effect unless expressly agreed to by OWNER in its sole discretion.

All claims, disputes, controversies and other matters in question between Town of Basalt and Contractor shall, in the first instance, be subject to good faith negotiations between the parties. Either party may notify the other of a claim or dispute. Within ten (10) days after delivery of such notification, or such longer period as the parties may mutually agree, the parties shall meet in good faith to resolve any claims or disputes. In the event the parties cannot reach an agreement, each party shall have the remedies available to it and any remaining claims, disputes and controversies related to the Contract Documents, or breach thereof, will be determined in the District Court for Eagle County, Colorado.

- 10.4 Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act.
- 10.5 This Agreement shall be governed by the laws of the State of Colorado. Jurisdiction and venue of any suit, right, or cause of action arising under, or in connection with this Agreement shall be exclusive in the District Court for Eagle County, Colorado.

10.6 This Agreement supersedes all previous communications, negotiations and/or contracts between the respective parties hereto, either verbal or written, and the same not expressly contained herein are hereby withdrawn and annulled. This is an integrated agreement and there are no representations about any of the subject matter hereof except as expressly set forth in the Contract Documents.

10.7 Any notice and all written communications required under this Agreement shall be (i) personally delivered, (ii) mailed in the United States mails, first class postage prepaid, or (iii) transmitted by facsimile machine together with a hard copy conveyed by delivery or mail, to the appropriate party at the following addresses:

SGM:

Michael Fowler, Project Engineer
118 W. 6th, Suite 200
Glenwood Springs, CO 81601
Telephone: (970) 945-1004
Fax: (970) 945-5948

With a copy to Town:

Michael Scanlon, Town Manager
101 Midland Avenue
Basalt, CO 81621
Telephone: (970) 927-4701
Fax: (970) 927-4703

Contractor:

Oldcastle SW Group, Inc. dba United Companies
Attn: Kyle Alpha, General Manager
2273 River Road
Grand Junction, CO 81505
Telephone: (970) 243-4900
Fax: (970) 243-5945

Notices delivered in person shall be effective as of the date of delivery, mailed notices will be deemed given three business days after the date of deposit in a regular depository of the United States Postal Service, and Fax notices will be deemed given upon transmission, if during business hours, or the next business day. Either party can change its address for notice by notice to the other in accordance with this paragraph.

10.8 PROHIBITIONS ON PUBLIC CONTRACT FOR SERVICES:

As used in this section 10.8, the term undocumented individual will refer to those individuals from foreign countries not legally within the United States as set forth in C.R.S. 8-17.5-101 et seq. If Contractor has any employees or subcontractors, Contractor shall comply with C.R.S. § 8-17.5-101, *et seq.*, and this Contract. By execution of this Contract, Contractor certifies that it does not knowingly employ or contract with an undocumented individual who will perform under this Contract and that Contractor will participate in the E-verify Program or other Department of Labor and Employment program ("Department Program") in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Contract.

A. Contractor shall not:

- (i) Knowingly employ or contract with an undocumented individual to perform work under this contract for services; or

- (ii) Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an undocumented individual to perform work under the public contract for services.
 - B. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-verify Program or Department Program, as administered by the United States Department of Homeland Security. Information on applying for the E-verify program can be found at: http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.
 - C. Contractor shall not use either the E-verify program or other Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
 - D. If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an undocumented individual, the Contractor shall be required to:
 - (i) Notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an undocumented individual; and
 - (ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (i) of the paragraph (D) the subcontractor does not stop employing or contracting with the undocumented individual; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an undocumented individual.
 - E. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to its authority established in C.R.S. § 8-17.5-102(5).
 - F. If Contractor violates these prohibitions, the Town may terminate the contract for a breach of the contract. If the contract is so terminated specifically for a breach of this provision of this Contract, the Contractor shall be liable for actual and consequential damages to the Town as required by law.
 - G. The Town will notify the office of the Colorado Secretary of State if Contractor violates this provision of this Contract and the Town terminates the Contract for such breach.
- 10.9 Contractor shall make, keep maintain and allow inspection and monitoring by the Town, State and federal government 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 delivery of services or goods hereunder. Contractor shall maintain such records until the last to occur of the following: (i) a period of three years after the date of this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or if Contractor has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively the "Record Retention

Period”).

The Town, State and the federal government, or any of their duly authorized representatives, shall have the right to audit, inspect, examine, excerpt, copy and/or transcribe records related to this Agreement during the Record Retention Period. Contractor must maintain an established accounting system that complies with generally accepted accounting principles. Records related to disputes arising out of this Agreement shall be maintained and made available until such disputes have been resolved. As used in this provision, “records” includes books, papers, records, documents, accounting procedures and practices, and other data, regardless of the type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Further, the State may conduct an audit pursuant to C.R.S. 24-103-601.

Contractor shall maintain all records and other evidence sufficient to reflect costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement. Town, State, and the federal government, including the Comptroller General of the United States or any of their duly authorized representatives, shall have the right to examine and audit those records at any time, or from time to time. The right of examination shall include inspection at all reasonable times at the offices of Contractor or sub-contractors responsible for the Project.

Contractor will be required to submit cost or pricing data and supporting information in connection with any invoice relating to this Agreement if requested by Town. This section shall not be construed to require Contractor or its sub-contractors to create or maintain any record that they do not maintain in the ordinary course of business pursuant to a provision of law, provided that those entities maintain records which conform to generally accepted accounting practices. Contractor shall insert a clause containing the terms of this section in all contracts or sub-contracts that exceed \$100,000.

Contractor shall permit the Town, State or federal government, or any other duly authorized agent of a government agency, in their sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this Agreement 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 such monitoring shall be performed in a manner that shall not unduly interfere with the Contractor’s performance hereunder.

- 10.10 Any indemnity, warranty or guaranty given by Contractor to Owner under the Contract Documents shall survive the expiration or termination of the Contract Documents and shall be binding upon Contractor until any action thereunder is barred by the applicable statute of limitations or as otherwise expressly provided on the Contract Documents.
- 10.11 If Contractor brings to the performance of this Agreement a pre-existing patent or copyright, the Contractor shall retain all rights and entitlements to that pre-existing patent or copyright. Otherwise, it is expressly agreed that the work performed under this Contract is a work for hire.
 - A. If any discovery or invention arises or is developed in the course of, or as a result of, Work or services performed under this Agreement, or in any way connected herewith, the Contractor shall refer the discovery or invention to the Owner’s Project Manager for a determination whether patent protection will be sought in the name of the Town and/or State or federal government. Any and all patent rights accruing under or in connection with the performance of this Agreement are hereby reserved to Owner and/or the State or federal government. In the event that any books, manuals, films, or other copyrightable

material are produced, the Contractor shall notify the Owner. Any and all copyrights accruing under or in connection with the performance under this Agreement are hereby reserved to Owner and/or the State or federal government. All materials to which the Owner and/or the State and federal government is to have patent rights or copyrights shall be marked and dated by the Contractor in such a manner as to preserve and protect the legal rights of the Owner and/or the State and federal government.

- B. Prior to the initiation of services or Work under this Agreement, the Contractor shall disclose, in writing, all intellectual properties relevant to the performance of this Agreement which the Contractor knows, or should know, could give rise to a patent or copyright. The Contractor shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists. The Owner and/or the State and federal government shall then, under paragraph A above, have the right to all patents and copyrights which arise as a result of performance under this Agreement.
 - C. The terms and conditions specified in paragraphs A and B above shall also apply to any subcontract made under this Agreement. The Contractor shall be responsible for informing the subcontractor of the provisions of this section and obtaining disclosures.
 - D. Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials or work product of any type, including drafts, prepared by the Contractor in the performance of its obligations under this Agreement shall be the exclusive property of the Town and/or State and all work product shall be delivered to Owner for delivery to the State upon completion or termination hereof. The Owner and State's exclusive rights in such work product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Contractor's obligations hereunder without the prior written consent of the Owner and the State.
 - E. Notwithstanding anything to the contrary herein, and in addition to all other rights granted herein, a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes (a) the copyright in any Work developed under this Agreement and (b) any rights of copyright to which Contractor purchases ownership with support under this Agreement is hereby granted to Town, State and federal government.
- 10.12 All rights and title to works for hire under this Agreement, whether patentable or copyrightable or not, shall belong to the Owner and/or the State and federal government and shall be subject to the terms and conditions of this Agreement. The Contractor warrants that all materials produced hereunder will be of original development by the Contractor and will be specifically developed for the fulfillment of this Agreement and will not knowingly infringe upon or violate any patent, copyright, trade secret or other property right of any third party, and the Contractor shall indemnify and hold the Owner harmless from and against any loss, cost, liability or expense arising out of any breach or claimed breach of this warranty.
- 10.13 The signatories to this Agreement aver to their knowledge, no employee of the Town has any personal or beneficial interest whatsoever in the Work or property described in this Agreement. The 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 the Work and Contractor should not employ any person having such known interests.

10.14 In the event a change order or amendment to the Contract Documents is agreed to by the parties, the same shall be in writing and executed by both parties. Signature may be by Owner's Project Manager or the Town of Basalt Engineer within amounts budgeted and appropriated for this Agreement. Any other change order or amendment shall occur in compliance with Owner's contract approval policy.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

TOWN OF BASALT, COLORADO
By and through its Town Council

ATTEST

By: _____
Town Clerk

By: _____
Jacque Whitsitt, Mayor

"Contractor":

Oldcastle SW Group, Inc.
dba United Companies

By: _____

STATE OF COLORADO)
) ss:
TOWN OF BASALT)

The foregoing instrument was acknowledged before me by _____ of
_____ this _____, day of _____, 2016.

My commission expires: _____

Notary Public

EXHIBIT C TO AGREEMENT
LISTING OF FEDERAL AND STATE LAWS

FEDERAL REQUIREMENTS

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

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation:

- i) The Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
- ii) The Local Agency/Contractor shall request and obtain prior COOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
- iii) The Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements;
- iv) To expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to COOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable;
- v) The Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

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

C. Copeland "Anti-Kickback" Act

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

D. Davis-Bacon Act.

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

E. E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agencies and sub-the Local Agencies in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

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

Agreements of amounts in excess of \$100,000).

G. Energy Policy and Conservation Act

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

H. OMB Circulars

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

I. Hatch Act

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

J. Nondiscrimination 42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-:12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

M. Drug-Free Workplace Act

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

N. Age Discrimination Act of 1975

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

O. 23 C.F.R. Part 172

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

P. 23 C.F.R Part 633

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

Q. 23 C.F.R. Part 635

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

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

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

S. Nondiscrimination Provisions:

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

i) Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the

"Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii) Nondiscrimination

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

iii) Solicitations for Subcontracts. Including Procurement of Materials and Equipment

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

iv) Information and Reports

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

v) Sanctions for Noncompliance

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

T. Incorporation of Provisions§22

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

SH-82 Basalt Pedestrian Underpass
Project No. TAP M060-004 PCN 20284

EXHIBIT E TO AGREEMENT

FHWA FORM 1273

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the

notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts

should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

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

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

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the

contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered

transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

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

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

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

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

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

EXHIBIT F

CERTIFICATION OF FEDERAL AID CONTRACTS

Contractor certifies, by signing this Agreement, to the best of its knowledge and belief, that:

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

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

IX. TOWN OF BASALT GENERAL CONDITIONS

**EXHIBIT D
GENERAL CONDITIONS
TO CONSTRUCTION AGREEMENT
FOR
SH-82 BASALT PEDESTRIAN UNDERPASS PROJECT**

ARTICLE 1 – DEFINITIONS

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

ADDENDA: Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding documents or the Contract Documents.

AGREEMENT: The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

APPLICATION FOR PAYMENT: The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payment, and which is to include such supporting documentation as is required by the Contract Documents.

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

BONDS: Bid, performance, labor, materials and payment bonds, and other instruments of security.

CHANGE ORDER: A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Agreement. All change orders shall be approved by the State of Colorado prior to execution by Town and are subject to funds being budgeted and appropriated by the OWNER.

CONTRACT DOCUMENTS: Those documents set forth in Article 7 of the Agreement.

CONTRACT PRICE: The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement.

CONTRACT TIME: The number of days computed as provided in these General Conditions, or the date stated in the Agreement for the completion of the Work.

CONTRACTOR: The person, firm, or corporation with whom OWNER has entered into the Agreement.

DAY: A calendar day of twenty-four hours measured from midnight to the next midnight.

DEFECTIVE: An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory, faulty or deficient, or does not meet the requirements of any inspection, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER'S

recommendation of final payment or prior to the expiration of any applicable statute of limitations.

DRAWINGS: Graphic and pictorial portions of the Contract Documents which show the character and scope of the Work to be performed including design, location and dimension of the Work including plans, elevations, sections, details, schedules and diagrams, and which have been prepared or approved by ENGINEER, and are referred to in the Contract Documents.

EFFECTIVE DATE OF THE AGREEMENT: The date indicated in the Agreement on which it becomes effective, but, if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER: The person, firm or corporation to be identified by OWNER. The ENGINEER may be a department employee of OWNER who may perform all or some of the duties of ENGINEER, but in such case shall exercise his duties in conformance with the standards applicable to independent professional engineers.

FIELD ORDER: A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 10.2, but which does not involve a change in the Contract Price or the Contract Time.

MODIFICATION: (a) A written amendment of the Contract Documents signed by both parties, or (b) a change order. The Contract Documents may only be amended by a modification. A modification may only be issued after the effective date of the Agreement. The Contract Documents only create a contractual relationship between OWNER and CONTRACTOR.

NOTICE OF AWARD: The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified by OWNER, will sign and deliver the Agreement.

NOTICE TO PROCEED: A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run, and on which CONTRACTOR shall start to perform his obligations under the Contract Documents.

OWNER: The public body or authority, corporation, association, partnership, or individual with whom CONTRACTOR has entered into the Agreement, and for whom the Work is to be provided.

PROJECT: The SH-82 Basalt Pedestrian Underpass Project. The total construction of which the Work to be provided under the Contract Documents may be the whole or a part, as indicated elsewhere in the Contract Documents.

RESIDENT PROJECT REPRESENTATIVE: The authorized representative of ENGINEER as approved by OWNER who is assigned to the site or any part thereof.

SHOP DRAWINGS: All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by CONTRACTOR, a subcontractor, manufacturer, fabricator, supplier, or distributor to illustrate some portion of the work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a manufacturer, fabricator, supplier, or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

SPECIFICATIONS: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

SUBSTANTIAL COMPLETION: See Contract Documents including the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011) and Project Special Provisions.

WORK: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing and incorporating materials and equipment into all construction, all as required by the Contract Documents or as may be reasonably inferable therefrom and includes all labor, materials, equipment and services provided or to be provided by CONTRACTOR or to fulfill CONTRACTOR'S obligations.

ARTICLE 2 – PRELIMINARY MATTERS

DELIVERY OF BONDS:

- 2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

COPIES OF DOCUMENTS:

- 2.2 OWNER shall furnish to CONTRACTOR up to ten (10) copies (unless otherwise specified herein) of the Contract Documents as are reasonable necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction without markup thereon.

COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED:

- 2.3 The Contract Time will commence upon issuance of a Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the effective date of the Agreement.

STARTING THE PROJECT:

- 2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

BEFORE STARTING CONSTRUCTION:

- 2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER and OWNER any conflict, error, or discrepancy which CONTRACTOR may discover; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, or discrepancy in the Drawings or Specifications, unless CONTRACTOR had actual knowledge thereof, or should reasonably have known thereof.

- 2.6 Within ten days after the effective date of the Agreement (unless otherwise specified in the Contract Documents) CONTRACTOR shall submit to ENGINEER and OWNER for review and acceptance an estimated progress schedule indicating the starting and completion dates of the various stages of the Work, a preliminary schedule of shop drawings submissions, and a preliminary schedule of values of the Work.
- 2.7 When Contractor delivers the executed Agreement to Owner, CONTRACTOR shall also deliver to OWNER, with a copy to ENGINEER, certificates of insurance (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5 hereof.

PRE-CONSTRUCTION CONFERENCE:

- 2.8 Within twenty days after the effective date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference will be held for review and acceptance of the schedules referred to in paragraph 2.6, to establish procedures for handling shop drawings and other submittals, and for processing applications for payment, and to establish a working understanding among the parties as to the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT AND REUSE

INTENT:

- 3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. They may be altered only by a Modification.
- 3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If during the performance of the Work, CONTRACTOR finds a conflict, error, or discrepancy in the Contract Documents, he shall report it to ENGINEER and OWNER in writing at once and before proceeding with the Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflicts, error, or discrepancy in the Specifications or Drawings unless CONTRACTOR had actual knowledge thereof, or should reasonably have known thereof.
- 3.3 The Contract documents include those documents set forth in Article 7 of the Agreement.
- 3.4 It is the intent of the Specifications and Drawings to describe a complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with such meaning. References to codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, or code in effect at the time of opening of bids (or on the effective date of the agreement if there were no bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their agents or employees from those set forth in the

Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided for in paragraph 9.3.

- 3.5 The Contract Documents will be governed by the law of the place of the Project.

REUSE OF DOCUMENTS:

- 3.6 Neither CONTRACTOR nor any Subcontractor, manufacturer, fabricator, supplier, or distributor shall have or acquire any title to or ownership rights in any of the drawings, specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the Project, or any other project, without written consent of OWNER and ENGINEER, and specific written verification or adaptation by ENGINEER.

ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

AVAILABILITY OF LANDS:

- 4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures, or permanent changes in existing facilities, will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands or easements entitles him to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Article 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

PHYSICAL CONDITIONS:

- 4.2 Reference is made to the supplementary conditions for identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the Work which have been relied upon by ENGINEER in the preparation of the Drawings and Specifications. Such reports are not part of the Contract Documents.
- 4.3 *Intentionally Omitted.*
- 4.4 **Differing Site Conditions.** During progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract Documents or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected Work is performed.

Upon written notification, the ENGINEER will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract Documents, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The

ENGINEER will notify the CONTRACTOR of the determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the CONTRACTOR will be allowed unless the CONTRACTOR has provided the required written notice.

No Contract adjustment will be allowed under this clause for any effects caused on unchanged Work.

- 4.5 **Suspension of Work ordered by ENGINEER.** If the performance of all or any portion of the Work is suspended or delayed by the ENGINEER in writing for any unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the CONTRACTOR believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the CONTRACTOR shall submit to the ENGINEER in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the ENGINEER will evaluate the CONTRACTOR'S request. If the ENGINEER agrees that the cost and/or time for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the CONTRACTOR, its suppliers, or subcontractors at any approved tier, and not caused by weather, the ENGINEER, will make an adjustment (excluding profit) and modify the Agreement in writing accordingly. The CONTRACTOR will be notified of ENGINEER'S determination whether or not an adjustment of the Agreement is warranted.

No Contract adjustment will be allowed unless the CONTRACTOR has submitted the request for adjustment within the time prescribed.

No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

- 4.6 **Significant changes in the character of the Work.**

The ENGINEER, reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the CONTRACTOR agrees to perform the Work as altered.

If the alterations or changes in quantities significantly change the character of the Work under the Contract Documents, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other Work, cause such other work to become significantly different in character, an adjustment, excluding loss of anticipated profit, will be made to the Agreement. The basis for the adjustment shall be agreed upon in writing prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the CONTRACTOR in such amount as the ENGINEER may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract Documents, the altered Work will be paid for as provided elsewhere in the Agreement.

The term "significant change" shall be construed to apply only to the following circumstances:

- (A) When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- (B) When a major item of Work, is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract item, quantity, or in case of a decrease below 75 percent, to the actual amount of Work performed.
- (C) A major item of Work is any item having an original contract value in excess of 10 % of the original contract amount.

REFERENCE POINTS:

- 4.7 CONTRACTOR shall provide surveying as required for the Project. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified herein), shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER and OWNER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by professional qualified personnel.

ARTICLE 5 – BONDS AND INSURANCE

PERFORMANCE AND OTHER BONDS:

- 5.1 CONTRACTOR shall furnish performance, labor and material, and payment bonds, each in an amount at least equal to 100% of the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. These bonds shall remain in effect until after the date of final payment and all obligations of CONTRACTOR have been fulfilled. CONTRACTOR shall also furnish other bonds as are required by the Contract Documents. All bonds shall be in the forms prescribed by the Contract Documents, and be executed by such sureties as (a) are licensed to conduct business in the state where the project is located, and (b) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. The bonds shall be conditioned upon the faithful performance of the Contract Documents, and, in addition, shall provide that, if the CONTRACTOR or his or her subcontractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by CONTRACTOR or his or her subcontractors in the performance of the Work contracted to be done or fails to pay any person who supplies laborers, rental machinery, tools, or equipment, all amounts due as the result of the use of such laborers, machinery, tools or equipment in the prosecution of the Work, the surety will pay the same in an amount not exceeding the sum specified in the bond together with interest at the rate of eight percent per annum. Further, bonds shall be conditioned such that CONTRACTOR shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing such person or such person's subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of the Work and CONTRACTOR shall indemnify and save Town harmless to the extent of any payments in connection with the carrying out the Contract which Town may be required to make under the law. Subcontractors, material men, mechanics,

suppliers of rental equipment, and others may have a right of action for amounts lawfully due them from the Contractor or subcontractor directly against the principal and surety of such bond.

- 5.2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt, or becomes insolvent, or its right to do business is terminated in any state where any part of the project is located, or it ceases to meet the requirements of clauses (a) and (b) of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another bond and surety, both of which shall be acceptable to OWNER.

INSURANCE:

- 5.3 CONTRACTOR'S Liability Insurance: The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S operations under the Agreement, whether such operations be by himself, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

All such insurance shall remain in effect until final payment, and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work.

- 5.3.1 Claims under Workmen's Compensation, disability benefits, and other similar employee benefit acts;
- 5.3.2 Claims for damage because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability coverage;
- 5.3.3 Claims for damage because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual personal injury liability coverage;
- 5.3.4 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

Workmen's Compensation insurance shall provide coverage as required by the laws of the State of Colorado.

Insurance covering claims for damages to persons or property required by the preceding paragraph (except subparagraph 5.3.1) shall be in the following minimum amounts:

Bodily Injury Liability:	
Each Person:	\$1,000,000
Each Accident or Occurrence:	\$2,000,000
Property Damage Liability:	
Each Accident or Occurrence:	\$1,000,000
Aggregate:	\$2,000,000
Products and completed operations aggregate	\$2,000,000
Employers Liability, including Occupational Disease	\$500,000

Any one fire \$50,000

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, CONTRACTOR shall immediately obtain additional insurance to restore the full aggregate limit and furnish to OWNER a certificate or other document satisfactory to OWNER showing compliance with this provision.

Said insurance shall be furnished in types specified as follows:

- 5.3.5 CONTRACTOR'S Commercial General Liability Insurance written on ISO occurrence form CG 0001 or equivalent, issued to and covering the liability for damage imposed by law upon the CONTRACTOR and each Subcontractor with respect to all Work performed by them under the Agreement and covering premises and operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability.
- 5.3.6 *Intentionally Omitted.*
- 5.3.7 Completed Operations Liability Insurance issued to and covering the liability for damage imposed by law upon the CONTRACTOR and each Subcontractor arising between the date of final cessation of the Work, and the date of final acceptance thereof out of that part of the Work performed by each. Completed operations coverage shall be provided for a minimum period of one year following final acceptance of the Work.
- 5.3.8 Comprehensive Automobile Insurance covering any auto (including owned, hired and non-owned autos) shall be carried with a minimum limit of \$1,000,000.00 each accident combined single limit. All liability and property damage insurance required hereunder shall be Comprehensive General and Automobile Bodily Injury and Property Damage form of policy.
- 5.3.9 Employer's Liability Insurance covering all of CONTRACTOR's and any Subcontractor's employees acting within the course and scope of their employment.
- 5.3.10 *Intentionally Omitted.*
- 5.3.11 Professional liability and such other insurance as may be required by Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011).
- 5.4 *Intentionally Omitted.*
- 5.5 Subcontractor's Insurance: Before permitting any of his Subcontractors to perform any Work under this Agreement, CONTRACTOR shall either (a) require each of his Subcontractors to procure and maintain during the life of his Subcontracts insurance consistent with the requirements of paragraph 5.3 and its subparts above, or (b) insure the activities of his Subcontractors in his own policy.
- 5.6 Builder's Risk Insurance: Insofar as the Work to be performed under this Agreement consists entirely of new construction removed and separated from any existing facility used by OWNER, CONTRACTOR shall procure and maintain, for the duration of the Work of this Project,

Builder's Risk Insurance, including the perils of fire, extended coverage (loss due to vehicles, explosion, wind, flood, riot, etc.), vandalism and malicious mischief, and special extended coverage (loss due to falling objects, collapse, water damage from faulty or leaking systems, etc.) in the full amount of the Contract Price plus the cost of authorized extras. Said amount of insurance coverage shall be considered to cover the insurable value of the Work under this Agreement which is considered not to exceed one hundred percent (100%) of the amount of this Agreement and authorized extras. Such policy shall not insure any tools or equipment, or temporary structures erected at the site and belonging to any person or persons, or their Subcontractors who are obliged by contract with the OWNER to do Work on the Projects.

Such insurance shall be placed jointly in the names of the OWNER, State of Colorado - Department of Transportation, CONTRACTOR, and any and all Subcontractors, and any and all others obliged by contract with the OWNER to do Work on this Project and at the OWNER'S option, any other person or persons whom the OWNER deems to have an insurable interest in said property, or any part thereof, payable as their several interests may appear.

CONTRACTOR shall furnish OWNER with certification of said insurance prior to commencement of any Work. Any proceeds obtained from insurance provided for by this paragraph shall be paid to and held by the OWNER as trustee. The OWNER shall have the right to withhold payment of such proceeds until such time as the Work destroyed or damaged and covered by such insurance shall be reconstructed and shall pay such proceeds on an installment basis similar to that provided for by progress payments covering the original Work.

- 5.7 Certificates of Insurance: Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the Work. These Certificates shall contain provisions naming the OWNER and the State of Colorado Department of Transportation as an additional insured under CONTRACTOR'S insurance, as more fully required by the General Conditions herein, and that coverage afforded under the policies will not be cancelled until at least forty-five (45) days prior written notice has been given the OWNER and the State of Colorado via certified mail. No later than fifteen (15) days prior to the expiration date of any such coverage, CONTRACTOR and any Subcontractor shall deliver to OWNER certificates of insurance evidencing renewals thereof. In addition, upon request by the State of Colorado at any other time during the term of the Agreement, CONTRACTOR and any Subcontractor shall, within ten (10) days of such request, supply to the State of Colorado and OWNER evidence satisfactory to the State of compliance with Article 5. CONTRACTOR and his Subcontractors shall not permit any of his Subcontractors to start Work until all required insurance has been obtained and certificates with the proper endorsements have been filed with the OWNER. Failure of the CONTRACTOR to comply with the foregoing insurance requirement shall in no way waive the OWNER'S rights hereunder.
- 5.8 *Intentionally Omitted.*
- 5.9 *Intentionally Omitted.*
- 5.10 Coverage required of CONTRACTOR and any of its subcontractors shall be primary over any insurance or self-insurance program carried by OWNER or the State of Colorado.
- 5.11 All insurance policies in any way related to this Agreement and secured and maintained by CONTRACTOR as required in this Article 5 shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against OWNER or the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

- 5.12 OWNER and the State of Colorado-Department of Transportation shall be named as additional insured on the Commercial General Liability (construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037 and CG 2503 or equivalent) and Automobile Liability Insurance policies.
- 5.13 Contractor shall insert a clause containing the terms of Article 5 and all its subparts in all contracts or sub-contracts, and all Subcontractors shall purchase and maintain the insurance on the terms and conditions as set forth herein.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

SUPERVISION AND SUPERINTENDENCE:

- 6.1 CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR’S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR. OWNER may demand removal of any of CONTRACTOR’S employees, agents or sub-contractors whom the OWNER deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed contrary to the public interest or not in the OWNER’S best interest.
- 6.2.1 CONTRACTOR shall maintain and deliver to OWNER a daily job report of Work performed, notable events and incidents, weather conditions, Subcontractor’s performance, any deficiencies (and the corrective actions taken), delays, and other information that OWNER may reasonably request.
- 6.2.2 CONTRACTOR will participate in meetings with OWNER at a specific date, time and place established by OWNER, and to deliver all attending parties current reports on the following items: progress payment requests; requests for information-current log; change requests- current log; submittals- current log; change orders- current list; claims- pending claims, notices of claims and any plans to file claims, if applicable, project progress report, job problems and quality control review and other information OWNER may reasonably request.

LABOR, MATERIALS AND EQUIPMENT:

- 6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work, and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or

protection of persons, or the Work, or property at the site or adjacent thereto, and except as otherwise indicated in the supplementary conditions, if any, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime Work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER'S written consent given after prior written notice to ENGINEER.

- 6.4 *Intentionally Omitted.*
- 6.5 CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation, and completion of Work.
- 6.6 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by OWNER or ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of any required tests) as to the kind and quality of materials and equipment.
- 6.7 All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise provided in the Contract Documents.
- 6.8 CONTRACTOR shall replace supervision personnel as-needed based upon OWNER's assessment that the Project is not adequately staffed or the Work is not progressing adequately.
- 6.9 CONTRACTOR shall at all times maintain a full-time management and supervisory staff of competent persons at the Project site to coordinate and provide general direction of the Work and progress of subcontractors on the Project.
- 6.10 CONTRACTOR agrees that only competent and skilled workmen who satisfactorily perform their duties shall be employed on the Project and CONTRACTOR shall ensure that there are an adequate and competent supply of skilled workmen and materials as necessary to carry out the Work on a continuous basis.

EQUIVALENT MATERIALS AND EQUIPMENT:

- 6.11 Whenever materials or equipment are specified or described in the drawings or specifications by using the name of a proprietary item, or the name of a particular manufacturer, fabricator, supplier, or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by ENGINEER and OWNER if sufficient information is submitted by CONTRACTOR to ENGINEER and OWNER to determine that the material or equipment proposed is equivalent to that named. The procedure for review by ENGINEER and OWNER will be as set forth in paragraphs 6.11.1 and 6.11.2 below.
- 6.11.1 Requests for review of substitute items of material and equipment will not be accepted by ENGINEER or OWNER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER and OWNER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the

general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the drawings or specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject of payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by ENGINEER and OWNER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish, at CONTRACTOR'S expense, additional data about the proposed substitute. ENGINEER and OWNER will be the sole judge of acceptability, and no substitute will be ordered or installed without ENGINEER'S and OWNER's prior written acceptance. OWNER may notify CONTRACTOR and ENGINEER in writing that CONTRACTOR is authorized to work with ENGINEER on substitutions as set forth herein and shall only be required to seek OWNERS approval under 6.11 when the requested substitute is significant and material to the Project. OWNER may require CONTRACTOR to furnish, at CONTRACTOR'S expense, a special performance guarantee or other surety with respect to any substitute.

- 6.11.2 ENGINEER will record time required by ENGINEER and ENGINEER'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the drawings or specifications occasioned thereby, whether or not ENGINEER or OWNER accepts a proposed substitute. CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER'S consultants for evaluating any proposed substitute.

CONCERNING SUBCONTRACTORS:

- 6.12 CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. A Subcontractor or other person or organization identified in writing to OWNER and ENGINEER by CONTRACTOR prior to the Notice of Award, and not objected to in writing by OWNER or ENGINEER prior to the Notice of Award, will be deemed acceptable to OWNER and ENGINEER. Acceptance of any Subcontractor, other person or organization by OWNER or ENGINEER shall not constitute a waiver of any right of OWNER or ENGINEER to reject defective work. If OWNER or ENGINEER, after due investigation, has reasonable objection to any Subcontractor, or other person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute, and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate change order shall be issued. CONTRACTOR shall not be required to employ any Subcontractor, other person or organization against whom CONTRACTOR has reasonable objection.
- 6.13 CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors, and of persons and organizations directly or indirectly employed by them, and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create a contractual relationship between OWNER or

ENGINEER and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any monies due any Subcontractor, or other person or organization, except as may otherwise be required by law. OWNER or ENGINEER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done.

- 6.14 The divisions and sections of the specifications and the identifications of any drawings shall not control CONTRACTOR in dividing the Work among Subcontractors, or delineating the Work to be performed by any specific trade.
- 6.15 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER and ENGINEER. CONTRACTOR shall pay each Subcontractor a just share of any insurance monies received by CONTRACTOR on account of losses under policies issued pursuant to paragraph 5.6. Notwithstanding anything herein to the contrary, CONTRACTOR shall certify that each subcontract will be in the form of a written agreement containing all the requirements and applicable provisions of this Agreement or alternatively all subcontracts shall be subject to review and approval by OWNER.

PATENT FEES AND ROYALTIES:

- 6.16 CONTRACTOR shall pay all license fees and royalties, and assume all costs incident to the use in the performance of the Work, or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work, and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work, or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

PERMITS:

- 6.17 Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of bids. CONTRACTOR shall pay all charges of utility service companies for connections to the Work, and OWNER shall pay all charges of such companies for capital costs related thereto.

LAWS AND REGULATIONS:

- 6.18 CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If CONTRACTOR observes that the specifications or drawings are at variance therewith, CONTRACTOR shall give ENGINEER and OWNER prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification approved by OWNER. If CONTRACTOR performs any Work knowing, or having reason to know, that it is contrary to such laws, ordinances, rules, and regulations, and without such notice to ENGINEER and OWNER, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the specifications and drawings are in accordance with such laws, ordinances, rules, and regulations.

TAXES:

- 6.19 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by him in accordance with the law of the place of the Project.

USE OF PREMISES:

- 6.20 CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 6.21 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish, and debris from and about the premises as well as all tools, appliances, construction equipment, and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.
- 6.22 CONTRACTOR shall not load, nor permit any part of any structure to be loaded, in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- 6.23 CONTRACTOR shall be responsible for removing all water and or mud interfering with the Work.
- 6.24 CONTRACTOR shall perform the Work so as not to interfere with or disrupt the business operations of any adjacent businesses and recreation areas.
- 6.25 CONTRACTOR shall protect and prevent damage or disturbance to any trees or other vegetation as shown in the Contract Documents.
- 6.26 CONTRACTOR will locate all underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any easements containing such facilities, including those that convey electricity, gasses, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems which shall collectively be known as the "Underground Facilities" prior to performing the Work. Unless it is otherwise expressly provided in the Contract Documents;

- 6.26.1 OWNER shall not be responsible for providing any information to CONTRACTOR regarding the Underground Facilities; and
- 6.26.2 The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
 - a. Locating all Underground Facilities
 - b. Coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction; and the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

RECORD DOCUMENTS:

- 6.27 CONTRACTOR shall keep one record copy of all specifications, drawings, addenda, modifications, shop drawings, and samples at the site in good order and annotated to show all changes made during the construction process. These shall be available to ENGINEER and OWNER for examination and shall be delivered to ENGINEER for OWNER upon completion of the Work.

SAFETY AND PROTECTION:

- 6.28 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 6.28.1 all employees and Subcontractors on the Work and other persons who may be affected thereby,
 - 6.28.2 all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and
 - 6.28.3 other property at the site, or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in paragraph 6.28.2 or 6.28.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications, or to the acts or omissions of OWNER or ENGINEER). CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR, in accordance with paragraph 14.13, that the Work is acceptable.

- 6.29 CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent, unless otherwise designated in writing by CONTRACTOR to OWNER.

EMERGENCIES:

- 6.30 In emergencies affecting the safety or protection of persons, or the Work, or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from ENGINEER to OWNER, is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER and OWNER prompt written notice of any significant changes in the Work, or deviations from the Contract Documents caused thereby.

SHOP DRAWINGS AND SAMPLES:

- 6.31 See Section 105.02 of "Standard Specifications For Road and Bridge Construction", Colorado Department of Transportation, State of Colorado (2011). Notwithstanding anything to the contrary herein or Section 105.02, OWNER and the Colorado Department of Transportation shall approve all shop drawings.

CONTINUING THE WORK:

- 6.32 CONTRACTOR shall carry on the Work and maintain the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and OWNER may otherwise agree in writing.

INDEMNIFICATION:

- 6.33 To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER and the State of Colorado and its Department of Transportation, and their officials, agents and employees, from and against all suits, claims of any type or character, damages, liabilities, losses, and expenses including, but not limited to, attorney's fees and costs arising out of, or resulting from, the performance or non-performance of the Work, and including, but not limited to, claims, damages, liabilities, losses, or expenses attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including the loss of use resulting therefrom or is caused, in whole or in part, by any act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Nothing in the contract shall be interpreted that the OWNER waives its sovereign immunity granted under Colorado Governmental Immunity Act or other applicable law.

CONTRACTOR shall also comply with all other indemnification requirements set forth in the Contract Documents.

- 6.34 In any and all claims against OWNER or ENGINEER, or any of their agents or employees, by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.33 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any Subcontractor under worker's or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

- 6.35 The obligations of CONTRACTOR under paragraph 6.33 shall not extend to the liability of ENGINEER, his agents, or employees arising out of the ENGINEER'S preparation of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications.

ARTICLE 7 – WORK BY OTHERS

- 7.1 OWNER may perform additional Work related to the Project by himself, or have additional work performed by utility service companies, or let other direct contracts therefore which shall contain general conditions similar to these. CONTRACTOR shall afford the utility service companies and the other contractors who are parties to such direct contracts (or OWNER, if OWNER is performing the additional work with OWNER'S employees) reasonable opportunity for the introduction and storage of materials and equipment, and the execution of work, and shall properly connect and coordinate his work with theirs.
- 7.2 If any part of CONTRACTOR'S Work depends, for proper execution or results, upon the work of any such other contractor or utility service company (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER and OWNER in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to so report shall constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work, except for latent or non-apparent defects and deficiencies in the other work.
- 7.3 CONTRACTOR shall do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and integrate with such other Work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work, and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected.
- 7.4 If the performance of additional work by other contractors or utility service companies or OWNER was not noted in the Contract Documents, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional work by OWNER or others involves additional expense to CONTRACTOR, or requires an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

- 8.1 OWNER shall issue all communications to CONTRACTOR through ENGINEER.
- 8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.
- 8.3 OWNER and all of its employees and agents shall have the right to full access and use of the Project site. Such use shall not constitute acceptance of the Work or any part thereof, or waive any of OWNER'S rights or remedies under the Contract Documents.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

OWNER'S REPRESENTATIVE:

- 9.1 ENGINEER will be OWNER'S representative during the construction period as set forth in the Contract Documents. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER'S representative during construction are set forth in the Contract Documents, and shall not be extended without written consent of OWNER and ENGINEER. Notwithstanding anything to the contrary herein, in all instances in the Contract Documents where ENGINEER has the authority to make decisions concerning quality of and acceptance of the Work performed by CONTRACTOR the ENGINEER shall first discuss such decision and proposed acceptance with OWNER and obtain its approval prior to communicating with the CONTRACTOR. Further, in all instances in the Contract Documents where ENGINEER has the authority to make a decision that impacts the Project budget or Contract Price or payment to the CONTRACTOR, then Engineer shall first discuss the payment or costs with OWNER and obtain its approval prior to approving any payment, additive or deductive Work. Further, the State of Colorado shall approve all change orders under this Agreement. This paragraph is not intended as and shall not be a waiver of ENGINEER'S responsibility for oversight of the Work.

VISITS TO SITE:

- 9.2 ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work, and will endeavor to guard OWNER against defects and deficiencies in the Work.

CLARIFICATIONS AND INTERPRETATIONS:

- 9.3 ENGINEER will issue, with reasonable promptness, such written clarifications or interpretations of the Contract Documents (in the form of drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with, or reasonably inferable from, the overall intent of the Contract Documents.
If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefore, as provided in Article 11 or Article 12.

REJECTING DEFECTIVE WORK:

- 9.4 ENGINEER after conferring and receiving approval of OWNER will have authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work as fabricated, installed, or completed.

SHOP DRAWINGS, CHANGE ORDERS, AND PAYMENTS:

- 9.5 In connection with ENGINEER'S responsibility for shop drawings and samples, see paragraphs 6.31.
- 9.6 In connection with ENGINEER'S responsibilities as to change orders see Articles 10, 11, and 12.

- 9.7 In connection with ENGINEER'S responsibilities in respect to applications for payment, etc., see Article 14.

PROJECT REPRESENTATION:

- 9.8 ENGINEER may utilize Resident Project Representative to assist ENGINEER in observing the performance of the Work. The duties, responsibilities, and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Contract Documents. If OWNER designates another agent to represent him at the site who is not ENGINEER'S agent, the duties, responsibilities, and limitations of authority of such other person will be as provided the Contract Documents.

DECISIONS ON DISAGREEMENTS:

- 9.9 ENGINEER will be the initial interpreter of the requirements of the Contract Documents and after first conferring with OWNER will judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work, or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work, shall be referred initially to ENGINEER in writing with a request for a formal decision which ENGINEER will render in writing within a reasonable time after conferring with OWNER.

LIMITATIONS ON ENGINEER'S RESPONSIBILITIES:

- 9.10 ENGINEER'S authority to act under this Article 9, or elsewhere in the Contract Documents, nor any decision made by ENGINEER or OWNER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER or OWNER to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier, or distributor, or any of their agents or employees, or any other person performing any of the Work.
- 9.11 Whenever, in the Contract Documents, the terms "as ordered", "as directed", "as required", "as allowed", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory", or adjectives of like effect or import are used to describe requirement, direction, review, or judgment of ENGINEER as to the Work, it is intended that such requirement direction, review, or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct performance of the Work, or authority to undertake responsibility contrary to the provisions of paragraphs 9.12 or 9.13.
- 9.12 ENGINEER and OWNER will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER and OWNER will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.
- 9.13 ENGINEER and OWNER will not be responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

ARTICLE 10 – CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by change orders. Upon receipt of an executed change order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any change order causes an increase or decrease in the Contract Price, or an extension or shortening of the Contract Time, an equitable adjustment may be made as provided in Article 11 or Article 12 on the basis of a claim made by either party.
- 10.2 ENGINEER, with approval of OWNER, may authorize minor changes in the Work, not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order, and shall be binding on OWNER, and also on CONTRACTOR who shall perform the change promptly. If CONTRACTOR believes that a field order justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefore, prior to performing the Work as provided in Article 11 or Article 12.
- 10.3 Additional Work performed without authorization of a change order will not entitle CONTRACTOR to an increase in the Contract Price, or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.30, and for uncovering work found not to be defective.
- 10.4 OWNER may execute appropriate change orders prepared by ENGINEER covering changes in the Work which are required by OWNER, or required because of differing site conditions or emergencies, or because of uncovering Work found not to be defective, or as provided in paragraphs 11.10 or 11.11.
- 10.5 If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any bond to be given to the surety, it will be CONTRACTOR'S responsibility to so notify the surety, and the amount of each applicable bond shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to OWNER.
- 10.6 Notwithstanding anything to the contrary herein, State shall approve all change orders prior to any change order becoming binding on OWNER or the Project.

ARTICLE 11 – CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a change order. Any claim for an increase in the Contract Price shall be by written notice delivered to OWNER and ENGINEER within five (5) days of the occurrence of the event giving rise to the claim. Any change in the Contract Price resulting from any such claim and approved by ENGINEER and OWNER shall be incorporated in a change order which shall be approved by the State prior to execution by OWNER. No Work performed by CONTRACTOR shall be the basis for additional compensation unless and until CONTRACTOR has obtained written authorization and acknowledgement by OWNER for such Work. Accordingly, no course of conduct or dealings between the parties, nor verbal change orders, express or implied acceptance of alterations or additions to the Work, and no claim that OWNER has been unjustly enriched by any additional services or Work, whether or not there is in fact any such unjust enrichment, shall be the basis of any increase in the compensation payable

hereunder. In the event that written authorization and acknowledgment by OWNER for such work is not timely executed and issued in strict accordance with this Agreement, CONTRACTOR's rights with respect to such work or services shall be deemed waived and such failure shall result in non-payment for such services or work performed.

- 11.3 No change orders or other form of order or directive which requires additional compensable Work to be performed may be issued or be effective unless accompanied by a written assurance to the CONTRACTOR that lawful appropriations to cover the costs of the additional Work have been made.
- 11.4 The value of any Work covered by a change order, or of any claim for an increase or decrease in the Contract Price, shall be determined as set forth in Article 4 hereof and in accordance with the State of Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011).
- 11.5 *Intentionally Omitted.*
- 11.6 No Contractor's fee shall apply in the event of a change order.
- 11.7 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined adjustment to overhead and profit shall be figured on the basis of the net increase or decrease in allowable costs, if any.
- 11.8 Notwithstanding anything to the contrary herein, State shall approve all change orders prior to any change order becoming binding on OWNER or the Project.

ADJUSTMENT OF UNIT QUANTITIES:

- 11.9 Whenever the cost of any Work is to be determined based upon unit price, CONTRACTOR will submit, in form acceptable to ENGINEER and OWNER, an itemized cost breakdown together with supporting data.
- 11.10 Where the quantity of Work with respect to any item that is covered by a unit price differs materially and significantly from the quantity of such Work indicated in the Contract Documents, an appropriate change order (additive or deductive) may be issued on recommendation of ENGINEER with written approval of OWNER and as set forth in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011). In no event will the unit price bid by CONTRACTOR be modified, but the quantity of any item may be increased or decreased as set forth in the Contract Documents. Notwithstanding the foregoing, in no event will the change modify the not to exceed Contract Price or otherwise be modified without a change order approved in writing by OWNER and the State of Colorado.

CASH ALLOWANCES:

- 11.11 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents, and shall cause the Work so covered to be done by such Subcontractors, manufacturers, fabricators, suppliers, or distributors, and for such sums within the limit of the allowances as may be acceptable to ENGINEER and OWNER. Upon final payment, the Contract Price shall be adjusted as required, and an appropriate change order issued. CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR

deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be valid.

ARTICLE 12 – CHANGE OF THE CONTRACT TIME

- 12.1 The Contract Time may only be changed by a change order. Any claim for an extension in the Contract Time shall be by written notice delivered to OWNER and ENGINEER within five (5) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be determined as set forth in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011).
- 12.2 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of Articles 11 and 12 are CONTRACTOR'S sole remedies for delay by any cause whatsoever, including acts of OWNER.
- 12.3 Notwithstanding anything to the contrary herein, State shall approve all change orders prior to any change order becoming binding on OWNER or the Project.

ARTICLE 13 – WARRANTY AND GUARANTEE; TESTS AND INSPECTION; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

WARRANTY AND GUARANTEE:

- 13.1 CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work and materials will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.

ACCESS TO WORK:

- 13.2 OWNER, ENGINEER, ENGINEER'S representatives, other representatives of OWNER, testing agencies, and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

TESTS AND INSPECTIONS:

- 13.3 CONTRACTOR shall give ENGINEER and OWNER timely notice of readiness of work for all required inspections, tests or approvals.
- 13.4 If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested, or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith, and furnish ENGINEER and OWNER the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER'S or ENGINEER'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation of the Work. The cost of all other inspections, tests, and approvals required by the Contract Documents shall be paid by CONTRACTOR.

- 13.5 Any inspections, tests, or approvals, other than those required by law, ordinance, rule, regulation, code, or order of any public body having jurisdiction, shall be performed by organizations acceptable to OWNER and ENGINEER if so specified.
- 13.6 If any Work that is to be inspected, tested, or approved is covered without written concurrence of ENGINEER and OWNER, it must, if requested by ENGINEER or OWNER, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense, unless CONTRACTOR has given ENGINEER and OWNER timely notice of CONTRACTOR'S intention to cover such Work and ENGINEER and OWNER has not acted with reasonable promptness in response to such notice.
- 13.7 Neither observations by ENGINEER or OWNER nor inspections, tests, or approvals by others shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the Contract Documents.
- 13.7.1 OWNER and State reserve the right to inspect the Work at all reasonable times and places during the term of the Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the OWNER may require the CONTRACTOR promptly to bring the Work into conformity with Contract Documents, at the CONTRACTOR's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the OWNER may require CONTRACTOR to take necessary action to ensure that future performance conforms to the Contract Documents and may exercise remedies available under this Agreement, at law or in equity in lieu of or in conjunction with such corrective measures.

UNCOVERING WORK:

- 13.8 If any Work is covered contrary to the written request of ENGINEER or OWNER, it must, if requested by ENGINEER or OWNER, be uncovered for ENGINEER or OWNER's observation and replaced at CONTRACTOR'S expense.
- 13.9 If ENGINEER or OWNER considers it necessary or advisable that covered Work be observed by ENGINEER or OWNER, or inspected or tested by others, CONTRACTOR, at ENGINEER or OWNER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER or OWNER may require, that portion of the Work in question, furnish all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive change order shall be issued. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price, or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.

OWNER MAY STOP THE WORK:

- 13.10 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

- 13.10.1 OWNER, alone or after notice from the State, may provide notice to CONTRACTOR and suspend Work wholly or in part due to failure of CONTRACTOR to correct conditions which are unsafe to workers, conditions which are unsuitable for prosecution of the Work or for such periods as are necessary to protect the public interest.

CORRECTION OR REMOVAL OF DEFECTIVE WORK:

- 13.11 If required by ENGINEER or OWNER, CONTRACTOR shall promptly, without cost to OWNER and as specified by ENGINEER or OWNER, either correct any defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER or OWNER, remove it from the site and replace it with non-defective Work in a manner acceptable to the ENGINEER and OWNER.

MATERIALS:

- 13.12 Materials to be used or incorporated in the Project shall be new and of good quality. All warranties for materials furnished by any manufacturer or supplier are for the benefit of OWNER.

ACCEPTANCE OF DEFECTIVE WORK:

- 13.13 If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER'S recommendation of final payment,) prefers to accept it, OWNER may do so. In such case, if acceptance occurs prior to ENGINEER'S recommendation of final payment, a change order shall be issued incorporating the necessary revisions in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by CONTRACTOR to OWNER.

OWNER MAY CORRECT DEFECTIVE WORK:

- 13.14 If CONTRACTOR fails, within a reasonable time after written notice of ENGINEER or OWNER, to proceed to correct defective Work, or to remove and replace rejected Work as required by ENGINEER or OWNER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising his rights under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment, and machinery at the site, and incorporate in the Work all materials and equipment stored at the site, or for which OWNER has paid CONTRACTOR, but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents, and employees such access to the site as may be necessary to enable OWNER to exercise his rights under this paragraph. All direct and indirect costs of OWNER in exercising such rights shall be charged against CONTRACTOR in an amount verified by ENGINEER, and a change order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required, and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR'S defective Work.

CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights hereunder.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

SCHEDULES:

- 14.1 At least ten days prior to submitting the first application for a progress payment, CONTRACTOR shall (except as otherwise specified in the general requirements) submit to ENGINEER and OWNER a progress schedule, a final schedule of shop drawing submissions, and, where applicable, a schedule of values of the Work. These schedules shall be satisfactory in form and substance to ENGINEER and OWNER. The schedule of values shall include quantities and unit prices aggregating the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by ENGINEER and OWNER, it shall be incorporated into a form of application for payment acceptable to ENGINEER and OWNER.

APPLICATION FOR PROGRESS PAYMENT:

- 14.2 At least ten days before each progress payment falls due (but not more often than once a month), CONTRACTOR shall submit to ENGINEER and OWNER for review an application for payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the application, and accompanied by such supporting documentation as is required by the Contract Documents, and also as ENGINEER or OWNER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the application for payment shall also be accompanied by such data, satisfactory to OWNER, as will establish OWNER'S title to the material and equipment, and protect OWNER'S interest therein, including applicable insurance. In addition, the material and equipment shall conform to the requirements of the Contract Documents and the quantity of such stored material shall not exceed the total estimated quantity required to complete the Project. Further, the value of such stored material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated. Each subsequent application for payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior applications for payment. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR'S WARRANTY OF TITLE:

- 14.3 CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the Project or not, will pass to OWNER at the time of payment free and clear of all liens, claims, security interests, and encumbrances (hereafter in these General Conditions referred to as "Liens").

REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

- 14.4 ENGINEER will after conferring with OWNER, within ten days after receipt of each application for payment, either indicate in writing a recommendation of payment and present the application to OWNER, or return the application to CONTRACTOR indicating in writing ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the

necessary corrections and resubmit the application. OWNER shall, within twenty days of presentation to him of the application for payment with ENGINEER'S recommendation, pay CONTRACTOR the amount recommended.

- 14.5 ENGINEER'S recommendation of any payment requested in an application for payment will constitute a representation by ENGINEER to OWNER that, based on ENGINEER'S on-site observations of the Work in progress as an experienced and qualified design professional, and on ENGINEER'S review of the application for payment, and the accompanying data and schedules, the Work has progressed to the point indicated; that, to the best of ENGINEER'S knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon substantial completion, and to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation); and, that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed, or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials, or equipment has passed to OWNER free and clear of any Liens.
- 14.6 ENGINEER'S recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.
- 14.7 ENGINEER may refuse to recommend the whole, or any part of any payment if, in his opinion, it would be incorrect to make such representations to OWNER. He may also refuse to recommend any such payment, or, because of subsequently discovered evidence, or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in ENGINEER'S opinion to protect OWNER from loss because:
- 14.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,
 - 14.7.2 written claims have been made against OWNER, or Liens have been filed in connection with the Work,
 - 14.7.3 the Contract Price has been reduced because of modifications,
 - 14.7.4 OWNER has been required to correct defective Work, or complete the Work in accordance with paragraph 13.14,
 - 14.7.5 of CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents, or
 - 14.7.6 CONTRACTOR'S failure to make payment to Subcontractors, or for labor, materials, or equipment.

ACCEPTANCE AND PARTIAL UTILIZATION:

- 14.8 Acceptance and partial utilization of Work shall occur as set forth in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011) and other Contract Documents.
- 14.9 Substantial Completion shall occur as set forth in the Contract Documents including the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2011) and Project Special Provisions.
- 14.10 *Intentionally Omitted.*
- 14.10.1 *Intentionally Omitted.*
- 14.10.2 *Intentionally Omitted.*
- 14.10.3 No occupancy of part of the Work, or taking over of operations of a facility will be accomplished before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.

FINAL INSPECTION:

- 14.11 Upon written notice from CONTRACTOR that the Work is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR, and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

FINAL APPLICATION FOR PAYMENT:

- 14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and OWNER, and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents, and other documents, all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.14), CONTRACTOR may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied by all documentation called for in the Contract Documents, and such other data and schedules as ENGINEER may reasonably require. Payment shall be processed in accordance with C.R.S. 24-91-103 and C.R.S. 38-26-107. Notwithstanding the foregoing, CONTRACTOR will provide complete and legally effective lien releases or waivers satisfactory to OWNER. In lieu thereof, and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material, and equipment for which lien could be filed, and that all payrolls, material, and equipment bills, and other indebtedness connected with the Work, for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor, manufacturer, fabricator, supplier, or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER.

14.12.1 Before OWNER may advertise for final payment, CONTRACTOR shall deliver to OWNER for review:

- i. All guaranties and warranties;
- ii. A letter confirming that sales tax from the OWNER is exempt have not been paid;
- iii. One (1) complete bound set of required operations and maintenance manuals and instructions, if any;
- iv. One (1) set of as-built drawings in an electronic format acceptable to OWNER;
- v. To the extent not already furnished, one copy of all corrected Shop Drawings;
- vi. Satisfactory evidence that all payroll, material bills, and other indebtedness connected with the Work have been paid or otherwise satisfied;
- vii. A complete and final waiver and/or release of any and all lien rights and liens from each subcontractor of all tiers, material, men, supplier, manufacturer and dealer for all labor, equipment and material used of furnished by each on the Work;
- viii. Any other documents required to be furnished by the Contract Documents.

Upon completion of the foregoing, CONTRACTOR'S settlement shall be advertised in accordance with Colorado law. On the date of final settlement thus advertised, and after CONTRACTOR has submitted a written notice that no claims have been filed, final payment and settlement shall be made in full.

FINAL PAYMENT AND ACCEPTANCE:

14.13 If, after conferring with OWNER and on the basis of ENGINEER'S observation of the Work during construction and final inspection, and ENGINEER'S review of the final application for payment and accompanying documentation, all as required by Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, ENGINEER will, within ten days after receipt of the final application for payment, indicate in writing his recommendation of payment, and present the application to OWNER for payment. Thereupon, ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections, and resubmit the application. If the application and accompanying documentation are appropriate as to form and substance, OWNER shall, after receipt thereof, pay CONTRACTOR in accordance with payment procedures set forth in the Agreement, the amount recommended by ENGINEER.

CONTRACTOR'S CONTINUING OBLIGATION:

- 14.14 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of substantial completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER, nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

WAIVER OF CLAIMS:

- 14.15 The making and acceptance of final payment shall constitute:
- 14.15.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled liens, from defective Work or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; further, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and
- 14.15.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

- 15.1 OWNER may, at any time and without cause, suspend the Work, or any portion thereof, for a period of not more than ninety days, by notice in writing to CONTRACTOR and ENGINEER which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR may be allowed an increase in the Contract Price, or an extension of the Contract Time, or both, directly attributable to any suspension, if he makes a claim therefor as provided in Articles 11 and 12. Work may further be suspended, wholly or in part, due to the failure of the CONTRACTOR to correct conditions which are unsafe for workers or for such periods as OWNER may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by OWNER to be in the public interest.
- 15.2 Default and/or termination of the Contract shall be as set forth in Colorado Department of Transportation Standard Specifications for Road and Bridge Construction.
- 15.3 Where CONTRACTOR'S services have been terminated by OWNER, the termination shall not affect any rights of OWNER against CONTRACTOR then existing, or which may thereafter accrue. Any retention or payment of monies due CONTRACTOR by OWNER will not release CONTRACTOR from liability.
- 15.4 To the extent specified in any termination notice, CONTRACTOR shall not incur further obligations or render further performance hereunder past the effective date of such notice and shall terminate outstanding orders and sub-contracts with third parties. However, the CONTRACTOR shall complete and deliver to OWNER, all Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's

terms. Contractor shall insert a clause containing the terms of this section 15.4 in all contracts or sub-contracts that exceed \$10,000.

CONTRACTOR MAY STOP WORK OR TERMINATE:

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER, or under an order of court or other public authority, or ENGINEER fails to act on any application for payment within thirty days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed through the date of termination.

ARTICLE 16 – MISCELLANEOUS

GIVING NOTICE:

16.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

COMPUTATION OF TIME:

16.2 When any period of time is referred to in the Contract Documents by days, it shall be calendar days and be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday, or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

GENERAL:

16.3 Should OWNER or CONTRACTOR suffer injury or damage to his person or property because of any error, omission or act of the other party or of any of the other party's employees or agents, or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observances of such injury or damage.

16.4 The duties and obligations imposed by these general conditions and the rights and remedies available hereunder to the parties hereto, and, in particular, but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by paragraphs 6.33, 13.1, 13.11, 13.14, 14.3, and 15.2, and all of the rights and remedies available to OWNER and ENGINEER thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligations, right and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

TOWN OF BASALT Action Item	Date: May 10, 2016 From: Susan Philp <i>AICP</i> , Planning Director Town Manager Review: MS approved 5-5-16
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SUBJECT: Approval of Resolution No. 19, Series of 2016, informing the Clean Energy Collective (CEC) that the Town declines to pursue the purchase of solar panels to offset Town's electricity use

RECOMMENDATION: Motion to approve resolution which formally states that the Town is not going to continue pursuing funding for the purchase of solar panels.

DETAIL:

Background

Kevin Morse, Clean Energy Collective (CEC), has presented offers to the Basalt Green Team for the Town to own solar panels in CEC's fourth array for Holy Cross Energy members. CEC has now almost entirely completed its reservations for its 4th array for Holy Cross Energy members. The Basalt Green Team initially supported the Town moving ahead with a purchase because it was viewed as an important step in supporting the reduction of the Town's greenhouse gas emissions and addressing the Town's Green Goals.

The Town approved Resolution No. 16, Series of 2016 on April 12th. That resolution authorized the Town Manager to complete the reservation process by submitting a fully refundable deposit of \$32,346 and provided direction to the Town Manager, Financial Advisor, and Green Team for the next steps.

Current Activities

CEC presented a revised proposal on April 28th which was modestly less favorable than prior proposals because \$50,000 of Holy Cross rebates were reduced to \$30,000 as the Town had previously taken advantage of rebates in other Town projects. This meant that only 28% of the Town of Basalt's electrical energy use was being covered by the \$363,813 purchase (for clarification the "city's use" not the entire Town).

Bruce Kimmel, the Town's Financial advisor, informed that if the Town financed the full \$363,000 purchase price with a lease purchase of \$374,000 (\$11,000 of issuance costs), the Town's annual cost for the lease purchase would be \$42,700 assuming 10 years at 2.5% or \$31,300 annually assuming 15 years at 3%. Per the CEC proposal, there would be credits applied to the Town's Holy Cross Electric invoice reducing the Town's net fiscal impact.

Auden Schendler met with Green Team members and representatives of CORE on May 4th to discuss the amended CEC proposal. The discussion followed the Green Team's review of draft information on Basalt's greenhouse gas emission's inventory being prepared by CORE for the Town. While the information was in draft form, the initial data is showing that municipal energy use (which also included Basalt Sanitation and MidValley Metro as well as natural gas and solid waste impacts from all the municipal entities) only consumed 1% of the greenhouse gas emissions in the Town.

Ultimately, the Green Team members recommend that the Town not pursue the purchase for the following reasons:

1. Limited PR/education benefits—increasingly less of a statement
2. Limited carbon benefits
3. Lack of certainty of Town's ability to commit funds over the length of a lease
4. Consensus that there might be better ways to make an impact on greenhouse gas

emissions if funds are available. Potential projects include:

- accelerating the Town's conversion to LED street lights and making other efficiency improvements in Town buildings
- working with CORE to increase the efficiency of large buildings in Town – particularly in the historic downtown core
- working with the School District to increase building and lighting efficiencies

In addition concerns have been raised in terms of the Town's investment in a partnership where there is no guarantee about CEC's future ownership of the panels.

The resolution formally declines the proposal and requests the return of the \$32,326 deposit.

Related Town Statute and or Town Actions: 2014 and 2015 Work Plans which included a policy of establishing a "net zero downtown"

Budget: see above summary

Attachments: Draft Resolution; April 28, 2016 Revised Proposal/Reservation; Resolution No. 16, Series of 2016

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, INFORMING
CLEAN ENERGY COLLECTIVE (CEC) THAT THE TOWN IS NOT PURSUING THE
PURCHASE OF SOLAR PANELS**

**Town of Basalt, Colorado
Resolution No. 19
Series of 2016**

RECITALS

1. Clean Energy Collective (CEC) has presented offers to the Basalt Green Team for the Town to own solar panels in CEC's fourth array for Holy Cross Energy members.
2. CEC submitted a revised proposal to the Town on April 28, 2016 representing the last remaining panels that could be made available to the Town of Basalt in CEC's fourth array.
3. The Town Council approved Resolution No. 16, Series of 2016 on April 12th authorizing a \$32,346 fully refundable deposit and directing several actions to advance the Town's purchase.
4. Upon further evaluation by the Town's Green Team members and the Town Council it was decided to stop pursuing the Town's purchase of the solar array.

NOW, THEREFORE, BE IT RESOLVED by the Basalt Town Council of Basalt, Colorado, as follows:

Based on the evidence, testimony, exhibits, and comments from the public and Town Staff, the Basalt Town Council hereby:

1. Authorizes the Town Manager to inform CEC that the Town will not be purchasing the solar panels and to request the return of the \$32,346 fully refundable deposit.
2. Asks the Green Team to explore with CORE other ideas for creating a net zero downtown and for making a statement about reducing greenhouse gas emissions in the Town of Basalt.

READ AND ADOPTED by a vote of _ to _ on May 10, 2016.

TOWN OF BASALT, COLORADO

ATTEST:

By: _____
Jacque R Whitsitt, Mayor

Pamela K Schilling, Town Clerk



April 28, 2016

Town of Basalt
 101 Midland Ave.
 Basalt, CO 81621

Clean Energy Collective (CEC) is pleased to present the Town of Basalt with the opportunity to own solar panels in CEC's fourth array for Holy Cross Energy members. CEC community solar reduces monthly electricity bills, protects against rising energy prices, and provides a positive financial payback, all with no changes to facilities or additional operating costs. The proposed renewable energy system leverages available discounts and incentives for the lowest price, and generates optimal financial savings to ensure the best payback. Your 2015 electrical usage was 660,841kWh. The below 120 kW solar system offsets approximately 28% of the Town's electricity usage. The savings shows a payback of your system in approximately 14 years.

System Size		
Panel Size (watts)	Panels	Watts
113	1064	119,700
System Price		
	Per Watt	Total
Gross Price	\$4.70	\$562,590
30% Discount From Federal Tax Credit	(\$1.41)	(\$168,777)
HCE Rebate	(\$0.25)	(\$30,000)
Net Purchase Price	\$3.04	\$363,813

Year 1	
Bill Credits	\$21,779
First Year Payback	6.0%
First 20 Years	
Bill Credits	\$551,192
Savings vs. Purchase Price	\$187,379
20 Year ROI	52%
50 Years	
Bill Credits	\$2,190,089
Savings vs. Purchase Price	\$1,826,276
50 Year ROI	502%
50 Year Environmental Benefits	
CO2 Avoided (lbs)	14,210,225
Car Travel Avoided (miles)	16,112,950
Trees Planted	21,917

401 Tree Farm Drive, Carbondale, CO 81623 // phone 800.646.0323 // fax 970.692.2592 // easycleanenergy.com

The information contained in this proposal has been prepared in good faith. All figures herein are only estimates of future costs, production and savings. Actual performance will vary. Clean Energy Collective bears no responsibility for variations between its projections and the actual realized performance. This proposal should not be considered as investment or tax advice, nor is it the offering of a financial instrument or security. Consult your accountant about any possible tax implications related to this proposal. Projected Power Credit savings estimates assume 5% annual electricity price inflation.

ESTIMATED POWER PRODUCTION AND SAVINGS						
Bill Credit Escalator		3.50%		Panels	1,064	
Bill Credit Rate		\$0.11713		Watts	119,700	
				Net Purchase Price	\$363,813	
				50 Year ROI	502%	
Year	Annual kWh	Credit Rate	Est. Bill Credits	O&M Expense	Total Est. Savings	Cumulative Savings
1	185,942	\$0.11713	\$21,779	\$0	\$21,779	\$21,779
2	184,702	\$0.12070	\$22,294	\$0	\$22,294	\$44,074
3	183,462	\$0.12440	\$22,823	\$0	\$22,823	\$66,897
4	182,221	\$0.12823	\$23,367	\$0	\$23,367	\$90,264
5	180,981	\$0.13220	\$23,925	\$0	\$23,925	\$114,189
6	179,741	\$0.13630	\$24,498	\$0	\$24,498	\$138,687
7	178,501	\$0.14054	\$25,087	\$0	\$25,087	\$163,775
8	177,260	\$0.14494	\$25,692	\$0	\$25,692	\$189,466
9	176,020	\$0.14949	\$26,312	\$0	\$26,312	\$215,779
10	174,780	\$0.15419	\$26,950	\$0	\$26,950	\$242,729
11	173,540	\$0.15906	\$27,604	\$0	\$27,604	\$270,333
12	172,299	\$0.16411	\$28,275	\$0	\$28,275	\$298,608
13	171,059	\$0.16933	\$28,965	\$0	\$28,965	\$327,573
14	169,819	\$0.17473	\$29,672	\$0	\$29,672	\$357,245
15	168,579	\$0.18032	\$30,398	\$0	\$30,398	\$387,642
16	167,338	\$0.18610	\$31,142	\$0	\$31,142	\$418,785
17	166,098	\$0.19209	\$31,906	\$0	\$31,906	\$450,691
18	164,858	\$0.19829	\$32,690	\$0	\$32,690	\$483,380
19	163,618	\$0.20471	\$33,493	\$0	\$33,493	\$516,874
20	162,378	\$0.21135	\$34,318	\$0	\$34,318	\$551,192
Yrs 1-20	3,483,195		\$551,192	\$0	\$551,192	\$551,192
Yrs 21-50	4,545,180		\$1,638,897	\$0	\$1,638,897	\$2,190,089
Total	8,028,376		\$2,190,089	\$0	\$2,190,089	

Annual kWh is the estimated production from your portion of the solar facility.

Credit rate is the estimated credit adjusted for inflation at 3.5% per year.

401 Tree Farm Drive, Carbondale, CO 81623 // phone 800.646.0323 // fax 970.692.2592 // easycleanenergy.com

The information contained in this proposal has been prepared in good faith. All figures herein are only estimates of future costs, production and savings. Actual performance will vary. Clean Energy Collective bears no responsibility for variations between its projections and the actual realized performance. This proposal should not be considered as investment or tax advice, nor is it the offering of a financial instrument or security. Consult your accountant about any possible tax implications related to this proposal. Projected Power Credit savings estimates assume 5% annual electricity price inflation.

FINANCING WITH A 15 YEAR LEASE

Lease Terms & Repayment

\$363,813	Purchase Price	Interest Rate	5.25%
(\$134,611)	Down Payment	Term (years)	15
\$229,202	Amount to Finance	Monthly Payment	(\$1,834)
37%	Down Payment %	Annual Payments	(\$22,014)

Panels	1064	Capital Deployed	
Watts	119,700	Down Payment	\$134,611
Net Purchase Price	\$363,813	Net Cash Generated	\$220,985
		Net Gain on Purchase	\$86,374
		Net Gain Over 20 Yrs	64%

ESTIMATED CASH FLOW WITH A 15 YEAR LEASE

Year	Est. Bill Credits	Lease Payment	Net Cash Flow	Cumulative Net Cash Flow
1	\$21,779	(\$22,014)	(\$234)	(\$234)
2	\$22,294	(\$22,014)	\$281	\$46
3	\$22,823	(\$22,014)	\$810	\$856
4	\$23,367	(\$22,014)	\$1,353	\$2,209
5	\$23,925	(\$22,014)	\$1,911	\$4,120
6	\$24,498	(\$22,014)	\$2,485	\$6,605
7	\$25,087	(\$22,014)	\$3,073	\$9,678
8	\$25,692	(\$22,014)	\$3,678	\$13,356
9	\$26,312	(\$22,014)	\$4,299	\$17,655
10	\$26,950	(\$22,014)	\$4,936	\$22,591
11	\$27,604	(\$22,014)	\$5,590	\$28,181
12	\$28,275	(\$22,014)	\$6,262	\$34,443
13	\$28,965	(\$22,014)	\$6,951	\$41,394
14	\$29,672	(\$22,014)	\$7,658	\$49,052
15	\$30,398	(\$22,014)	\$8,384	\$57,436
16	\$31,142	\$0	\$31,142	\$88,578
17	\$31,906	\$0	\$31,906	\$120,484
18	\$32,690	\$0	\$32,690	\$153,174
19	\$33,493	\$0	\$33,493	\$186,668
20	\$34,318	\$0	\$34,318	\$220,985
Total	\$551,192	(\$330,206)	\$220,985	

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CEC Community Solar for Holy Cross Members

Holy Cross Energy (HCE) members can purchase solar power from community-owned solar facilities built and maintained by Clean Energy Collective. All Holy Cross Energy customers can participate. In June of 2011, CEC launched the Garfield County Airport Community Solar Array (GCASA), a 5 acre parcel of otherwise unbuildable land located at the Garfield County Airport in Rifle, Colorado. This 858 kW array consisting of 3,575 solar panels is sold out. To meet customer demand, in early 2015 CEC built its third project for HCE members. This 1,790 kW array, located in Carbondale, sold out before construction was completed. Now, CEC is building its fourth community solar array for HCE members. This 825kW project is expected to be completed by the end of 2015.

Monthly Power Credits

Each month, Holy Cross determines the credit amount owed to each customer based on the array's full production, the customer's system size, and the current Power Credit rate: \$0.11577/kWh. As HCE's base rate changes over time, the Power Credit rate changes the same amount in order to keep pace with increasing electric costs. Each customer receives their credit posted on their electric bill, one month in arrears. Holy Cross continues to bill each customer for their electricity usage under prevailing tariff rates. Solar Power Credits are posted as a single line item entry reducing the total amount owed. Customers may apply bill credits to any of their Holy Cross Energy meters. Any credits that exceed monthly usage charges are rolled over and applied to future months' billings.

Available Rebate from HCE

Holy Cross Energy currently offers a rebate for solar power installations. This rebate starts at \$0.75 per watt of capacity up to a 6 kW, and then decreases as additional capacity is purchased. The rebate applies to each meter to which a customer allocates panels, not to exceed \$10,000 per meter, and \$50,000 per customer. The HCE rebate is also subject to the availability of a limited pool of funds. Clean Energy Collective customers receive the value of the HCE rebate in the one-time system price, reducing the upfront system cost.

Federal Tax Credit

The current federal tax code includes an available investment tax credit incentive for individuals and businesses who install a solar PV system on their property. This direct tax credit is unavailable to offsite community solar customers; however, CEC captures the federal tax credit for the entire array and includes a 30% discount, equal to the value of the federal investment tax credit for solar installations, in the one-time system price. As a result, all CEC customers, regardless of their tax status, can experience the full value of the tax incentive without having to file for anything on their tax returns.

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Depreciation

Commercial customers may be eligible to take equipment depreciation on purchases of a specific number of panels within CEC's community-owned solar array. The depreciation tables above illustrate those depreciation benefits, using a 6 year MACRS (Modified Accelerated Cost Recovery System) treatment, which begins after year five once the purchase option has been exercised. The proposal assumes the estimated value of the system at the time of exercising the purchase option is 75% of the original system price, which is depreciated using MACRS over the subsequent six years. The table below reflects the current published depreciation schedule for MACRS.

	6th Year	7th Year	8th Year	9th Year	10th Year	11th Year
Depreciation	20.00%	32.00%	19.20%	11.50%	11.50%	5.80%

Consult your tax advisor regarding your system's eligibility for, and the tax implications of depreciation.

Reserving your System

Reservations can be secured with a fully refundable 10% deposit with the full purchase price required at closing (upon activation of the array).

Contract Structure

Your organization will be purchasing a specific number of panels within CEC's solar facility. Holy Cross and CEC have entered into a 20 year PPA (Power Purchase Agreement) with an automatic renewal feature. Under the terms of the contract you will appoint CEC as your agent to sell the power produced and environmental attributes of your panels to Holy Cross Energy. In return, you will receive the energy Power Credit on your Holy Cross Energy bill each month and a one-time rebate at the time of your panel purchase as described above. Taking direct ownership of the panels allows you to benefit from the estimated 50 year life of the solar facility and significantly increase the amount of savings your panels will generate. Reservations can be secured with a fully refundable 10% deposit with the full purchase price required at closing (upon activation of the array).

Financing

CEC has financing partners available to provide commercial loans for the purchase of interest in the solar arrays.

Customer Purchase Restrictions

Under the Holy Cross Energy program, Holy Cross Energy customers may purchase solar panels sufficient to produce up to 120% of their historical average annual usage.

Transfer and Sale

Bill credits can be assigned or reassigned to any of the customer's Holy Cross meters or accounts, regardless of location on the Holy Cross grid. Customers may sell or donate their panels to any other Holy Cross member at any time.

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Operations & Maintenance Program

CEC is responsible for the ongoing operations and maintenance of each solar array. This includes active daily monitoring of production and weather information, as well as real-time visibility into actual production. Any unexpected degradation in production is flagged and investigated by CEC and our maintenance contractors. The manufacturer's 25 year panel warranty covers expected annual production assuming a 2.5% degradation rate in year 1, and then 0.67% per year for the next 24 years. Panels not meeting the warranted production levels will be replaced. To ensure that maintenance is provided over the life of the array, CEC establishes a separate O&M Trust account, which holds all of the funds necessary to pay for maintenance, insurance, property taxes and land costs.

CEC's operations and maintenance program is anchored by the creation of the O&M Trust and the funding that is placed in the account. The O&M Trust account is funded with an initial contribution by CEC and ongoing monthly contributions of 10% of the value of total kWh's produced. The Trust Account is established to ensure that the solar facility is able to operate for years to come, independent of CEC's continued operations.

The CEC O&M program provides:

- A segregated Trust Account that holds all of the Operations and Maintenance funds, the contract with Holy Cross Energy, the land lease and all of the manufacturers' warranties.
- Real time monitoring of the array's production.
- Real time monitoring of the weather and irradiation at the array.
- Baseline production monitoring against the expected production per year, not just the manufacturers' warranties. If production falls by more than 2%, the array is inspected and faulty components are replaced or repaired.
- Annual inspections of the array by certified technicians.
- 25 year panel warranties from the manufacturer.
- 10 year successive inverter warranties from the manufacturer.
- 10 year installation warranty from the installation contractor.
- Immediate repair or replacement of faulty or defective parts.
- Insurance against all damages at full replacement value.

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Get Started Today

Complete ALL of the following steps to reserve your system.

1. Choose your system size:

kW System Size:

Price:

Deposit (10%):

2. Send your Payment and Information – Complete all of the information on this page and then send with your refundable deposit check payable to: **CEC Deposit Trust**

Mail to: **Clean Energy Collective Deposit Trust, PO Box 173704, Denver, CO 80217-3704**

Your deposit is fully refundable and secures your system in the array on a first-come, first-serve basis.

3. E-Sign your Agreements – Once we receive your information and deposit, we will create your customer agreements. You will receive an e-mail with instructions for completing the agreements electronically via CEC’s secure website.

4. Customer Information – for all agreements (print)

Business or Organization

Contact Name

City

State

Zip

County

Mailing Address (if different than physical address above)

Primary Phone Number

Secondary Phone Number

HCE Account Number

HCE Meter Numbers

Customer Signature

Date

5. Confirmation –Your reservation is confirmed after receipt of your deposit. Your final payment is required to activate your panels once construction is complete. Thank you for joining Clean Energy Collective!

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**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, GRANTING
APPROVAL FOR THE TOWN TO PURSUE OWNING SOLAR PANELS IN A CLEAN
ENERGY COLLECTIVE ARRAY**

**Town of Basalt, Colorado
Resolution No. 16
Series of 2016**

RECITALS

1. Clean Energy Collective (CEC) has presented offers to the Basalt Green Team for the Town to own solar panels in CEC's fourth array for Holy Cross Energy members.

2. The Basalt Green Team has been supportive of the Town moving ahead with a purchase because it is viewed as an important step supporting the reduction of the Town's greenhouse gas emissions and addressing the Town's Green Goals.

3. A proposal was presented to the Town Manager, Planning Director, representatives of CORE, and a couple Basalt Green Team members (subcommittee) on April 7, 2016, whereby the subcommittee concluded that the Town should move forward with reserving the last remaining available panels from CEC.

4. CEC submitted an updated proposal to the Town on April 8, 2015 which included a 113 KW solar system to offset 41% of the Town's electrical energy use. This represents the last remaining panels that could be made available to the Town of Basalt in CEC's fourth array.

NOW, THEREFORE, BE IT RESOLVED by the Basalt Town Council of Basalt, Colorado, as follows:

Based on the evidence, testimony, exhibits, and comments from the public and Town Staff, the Basalt Town Council hereby approves authorizing the Town Manager to complete CEC's Reservation process by authorizing a fully refundable deposit of \$32,346 to reserve panels to off-set the Town's electricity expense and 41% of its usage for 60 days with the following additional provisions:

1. Direct the Town Manager and Financial consultant to develop a financing plan for the purchase of the panels for recommendation to the Town Council.

2. Ask the Basalt Green Team to explore other options for offsetting the other 59% of the Town's electrical energy use.
3. Direct the Town Manager and Green Team to look at other ways to implement the Town's goal of creating a "Net Zero" downtown.
4. Direct the Town Manager to negotiate a contract with CEC to bring back for the Council's consideration which would give the Town the first right to purchase more panels from CEC should CEC be successful in negotiating a contract with Holy Cross Energy and approval for building a fifth solar array.

READ AND ADOPTED by a vote of 4 to 0 on April 12, 2016.

TOWN OF BASALT, COLORADO

ATTEST:

By: _____

Jacque R Whitsitt, Mayor

Pamela K Schilling

Pamela K Schilling, Town Clerk



TOWN OF BASALT Action Item	Date: May 10, 2016 From: James Lindt, Assistant Planning Director
	Town Manager Review: MS 5-6-16

RECOMMENDATION: Staff recommends that Council approve the attached resolution.

DETAILS: Approvals were granted in 2006 for the property owner of Lots D-G of the Basalt Commercial Park (adjacent to Stubbies Restaurant and Bar on Emma Road) to construct a hotel. The then owner of the property, Jim Richmond, obtained a building permit and constructed a foundation on the property, but lost construction financing when Lasalle Bank went under during the recession. The property then transferred ownership to Real America LLC. in 2013 and they received approval to construct a 56-unit affordable housing project on the vacant building foundation.

An attempt by the Town and Pitkin County to work out a financial package with Real America failed for various reasons. Real America then applied for tax credits from the Colorado Housing and Finance Authority (CHFA) last summer, but was not awarded the tax credits. It was identified by CHFA that the main weakness in Real America's tax credit application last year was that there was no local financial contribution. Real America would like to once again apply for tax credits from CHFA in the tax credit round beginning June 2nd and are asking for the Town to provide \$175,000 in assistance to the project.

Staff has calculated the fees to be collected from the project and the fees essentially offset the \$175,000 request without impinging on the Town's general fund or fund balance. Staff would recommend approving the attached resolution giving Staff the direction to draft a letter of support and contribute Real America's building permit fees up to \$175,000 in the event that they receive tax credits to build the project from CHFA. Real America believes that obtaining confirmation of a contribution of \$175,000 from the Town will allow them to obtain the allocation of tax credits from CHFA to construct the 56 units of affordable housing. The requested \$175,000 contribution represents approximately 25% of the building permit and associated fees that would be collected by the Town at the issuance of a building permit for the project.

RECOMMENDATIONS FROM OTHER BOARDS: The Basalt Affordable Community Housing (BACH) Committee has continuously supported the Roaring Fork Apartments affordable housing project. The Basalt Chamber has been seeking letters of support to send to CHFA from businesses in Town.

RELATED TOWN STATUTE AND TOWN ACTIONS: Ordinance No. 17, Series of 2013, Approving the 56 units of Affordable Housing; Ordinance No. 25, Series of 2015, Extending the Recordation Deadline for the Roaring Fork Apartments

ATTACHMENTS: A) Draft Resolution; B) Letter of Request

RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, DIRECTING THE TOWN MANAGER TO DRAFT A LETTER OF SUPPORT FOR THE ROARING FORK APARTMENTS TAX CREDIT APPLICATION AND SUPPORTING THE CONTRIBUTION OF \$175,000 FOR THE CONSTRUCTION OF THE ROARING FORK APARTMENTS AFFORDABLE HOUSING PROJECT

**Town of Basalt, Colorado
Resolution No. 20
Series of 2016**

RECITALS

Whereas, the Town approved a development known as the Roaring Fork Apartments for the construction of fifty-six (56) affordable housing units on the property known as Lots D-G, Basalt Commercial Park.

Whereas, the Town of Basalt recognizes the economic and social value of the development of fifty-six (56) units of affordable housing under the current economic and housing conditions in the Roaring Fork Valley.

Whereas, the Property Owner, Real America LLC. has represented that the Colorado Housing and Finance Authority (CHFA) expressed that the main weakness in Real America's 2015 tax-credit application was the lack of a contribution from the local jurisdiction.

Whereas, Real America LLC. has requested that the Town provide a \$175,000 contribution to the Project in order to aid in obtaining tax credits in the June 2016 tax-credit round administered by CHFA.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO:

Section 1. The Town Council hereby directs the Town Manager to draft a letter of support for the Roaring Fork Apartments tax credit application and appropriate the expenditure of \$175,000 for the Roaring Fork Apartments, subject to the following conditions:

- a. The financial contribution is only valid if Real America LLC. receives tax credits from CHFA for the Roaring Fork Apartments Project in the tax-credit round beginning on June 2, 2016 and Real America LLC. applies for and obtains a building permit prior to March 1, 2017.
- b. The \$175,000 contribution will be provided after the issuance of a building permit and payment of all applicable building permit fees by Real America LLC.

- c. The financial contribution is to be used solely for the construction of 56-unit Roaring Fork Apartments affordable housing project.

Section 2. The Town Manager is authorized to prepare and present to the Town Council any documents necessary for the Town's appropriation of the \$175,000 contribution in accordance with the requirements of the Town's Home Rule Charter.

RESOLUTION NO. 20, SERIES OF 2016, IS HEREBY ADOPTED by a vote of ___ to ___, this 10th day of May, 2016.

TOWN OF BASALT, COLORADO

ATTEST:

by _____
Jacque R. Whitsitt, Mayor

Pamela K Schilling, Town Clerk

April 15, 2016

Mr. James Lindt
Assistance Planning Director
Town of Basalt
101 Midland Avenue
Basalt, CO 81621

RE: Roaring Fork Apartments
Local Financial Assistance

Dear James,

As you know, RealAmerica Development has been trying for a couple of years to bring new, high-quality affordable housing to Basalt. We own the abandoned site at 111 Emma Road and have plans to construct 56 new apartments on the site. We are proposing a mix of 45 one-bedroom and 11 two-bedroom rental homes for Valley residents qualifying at Category 1, 2, and 3 levels per the Basalt Affordable Housing Guidelines.

We applied for Rental Housing Tax Credits through the Colorado Housing and Financing Authority (CHFA) last year and were not successful in this extremely competitive program. However, in our debrief with CHFA after the allocations were announced, they said they were very impressed with our application. Their main concern with our application was the lack of local financial participation. CHFA would like to see local financial participation if the state is going to invest almost \$9.5 million in the development. I believe that all other projects that received an allocation from CHFA last year featured some level of local financial support. Based on our conversations with CHFA, we do not believe that any project in Basalt would receive tax credits without some form of local financial participation.

We would like to try again this year with the Town's financial support. We are asking for \$175,000 in support. We are very flexible on what this financial support looks like. It can be a grant to the project, tax abatement, waived fees, required off-site improvements, etc. The Town of Basalt would be at no risk with this funding. We are asking for a commitment of funding for our new application that is due by June 2. The Town would only provide funding if we are successful with our tax credit application (which we think we can be with this local support) and we move forward with our affordable apartments.

Roaring Fork Apartments will greatly increase the supply of affordable housing in Basalt and in a great location within an easy walk of downtown and the RFTA stops on SR82. And this will likely be one of the Town's lowest investment per affordable unit in decades. We are requesting only \$3,125 per unit and no on-going subsidies! These are not units offsetting commercial or market rate development. These are just additional affordable apartments to ease the housing crunch in Basalt, make it easier for the schools, businesses, and others to hire and keep employees, and locate new residents close to the

restaurants and shopping of downtown Basalt. The Town's financial support will result in substantially increased property taxes from our property, as well as additional tax revenues generated from the residents. Plus, we are developing an abandoned eyesore! This is a win-win for all parties involved.

In addition to the financial support, we would also like a support letter from the Town to include with our application and it would be very helpful to have a representative from the Town government to join us for our presentation of the application to CHFA later this year.

I ask that this topic be put on the May 10 Town Council agenda for consideration. We need final action on our request before our application to CHFA on June 2.

Thank you for your consideration,



Jeffrey A. Ryan
Vice President of Development

TOWN OF BASALT Action Item	Date: May 10, 2016 From: James Lindt AICP, Assistant Planning Director
	Town Manager Review: MS 5-6-16

SUBJECT: First Reading of Ordinance No. 13, Series of 2016- approving a one year extension on the document recordation deadline and a corresponding extension of vested property rights for the Roaring Fork Apartments.

RECOMMENDATION: Staff recommends that the Council approve the ordinance on first reading and set the public hearing and second reading date for May 24, 2016.

DETAILS: Real America LLC. received PUD amendment approvals to construct a 56-unit affordable housing project on the property containing the vacant building foundation on Emma Road next to Stubbies Restaurant/Bar pursuant to Ordinance No. 17, Series of 2013 (Ordinance 17). Ordinance 17 (attached) established that the Applicant needed to execute and record final approval documents within 180 days of the effective date of Ordinance 17. Town Staff administratively extended this recording deadline several times. The Council further extended the recording deadline pursuant to Ordinance No. 25, Series of 2015 (attached) so that it will expire this May unless the Council extends it. Additionally, the vested rights on the project are set to expire November and the Applicant has requested to extend the vested rights to correspond with the timing of the proposed document recordation extension.

The Applicants informed that they sought construction financing through tax-credits with the State of Colorado, but did not receive the tax credits from Colorado Housing and Finance Authority in their first request. The Applicants have indicated that they are once again planning to apply for tax credits this summer to finance the construction of the apartments approved by Ordinance 17.

RECOMMENDATIONS FROM OTHER BOARDS: The P&Z is not required to review an extension of the recording deadline.

RELATED TOWN STATUTE AND TOWN ACTIONS: Ordinance No. 17, Series of 2013 approving the Roaring Fork Apartments; Basalt Commercial Park PUD Approvals

ATTACHMENTS: A) Draft Ordinance, B) Letter of Request for Extension, C) Ordinance No. 17, Series of 2013; D) Ordinance No. 25, Series of 2015

**Town of Basalt, Colorado
Ordinance No. 13
Series of 2016**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, GRANTING AN EXTENSION ON THE RECORDING DEADLINE
AND VESTED PROPERTY RIGHTS FOR THE ROARING FORK
APARTMENTS LAND USE APPROVAL DOCUMENTS, LOTS D, E, F, AND G,
BASALT COMMERCIAL PARK, BASALT, COLORADO (ALSO KNOWN AS
109, 113, 117, AND 121 EMMA ROAD)**

RECITALS

A. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to extend the recording deadline for the approval documents for the Roaring Fork Apartments pursuant to Ordinance No. 17, Series of 2013. Real America ("Applicant") received approval pursuant to Ordinance No. 17, Series of 2013, to construct a 56-unit affordable housing project on Lots D-G, of the Basalt Commercial Park. The recording deadline for the approval documents has been extended several times by the Town Planner, and the Town Council pursuant to Ordinance No. 25, Series of 2015. Further extension requires approval by the Town Council. Additionally, the vested property rights are set to expire in November of 2016. The Applicant has requested to further extend the recording deadline for the approval documents by an additional year and the vested property rights to correspond with the extended recording deadline.

B. As requested by the Applicant, the Town Staff recommends approval of the one year extension of the approval document recording deadline and the corresponding extension of the vested property rights.

C. At a public meeting held on May 10, 2016, the Town Council considered this Ordinance on first reading and set a public hearing and second reading for this Ordinance for May 24, 2016, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

D. At a public hearing and second reading on _____, 2016, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public.

E. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. The Town Council finds and determines this Ordinance is reasonable and consistent with the Town Code. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

the legitimate public purposes of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF
THE TOWN OF BASALT, COLORADO AS FOLLOWS:**

A. FINDINGS. The Town Council hereby incorporates by reference and conclusively makes the above findings.

B. CONDITIONS.

1. The one-year extension of the deadline for the recording of approval documents and a corresponding extension of vested property rights on the Roaring Fork Apartments Project are hereby approved, subject to the following conditions:

a. The length of the extension of the recording deadline shall be one year from the effective date of this ordinance. The document recording deadline shall now be _____ * (one year from the effective date of the ordinance).

b. The vested rights shall now expire on _____ * (one year from the effective date of the ordinance).

c. All other terms and conditions established in Ordinance No. 17, Series of 2013, and Ordinance No. 25, Series of 2015 shall remain in full force and effect.

d. The Applicant shall comply with all material representations made by the Applicant in the meetings before the Town Council.

C. MISCELLANEOUS.

1. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

2. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Pitkin County.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

*Date to be filled in after Second Reading of the Ordinance.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON May 24, 2016 by a vote of ___ to___ on May 10, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of ___ to___ on _____, 2016.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

Pamela K. Schilling, Town Clerk

Ord__-RoaringForkApartmentsExtension2016.doc

First Publication: Thursday, _____, 2016
Final Publication: Thursday, _____, 2016
Effective Date: Thursday, _____, 2016

*Date to be filled in after Second Reading of the Ordinance.

April 15, 2016

Mr. James Lindt
Assistance Planning Director
Town of Basalt
101 Midland Avenue
Basalt, CO 81621

RE: Roaring Fork Apartments
Extension of PUD approvals

Dear James,

Please find attached our application to extend the PUD approval for Roaring Fork Apartments. As you know, we have been trying to bring high-quality, affordable housing to Basalt for a few year now. From what we were told last year, we just missed out on receiving an allocation of Rental Housing Tax Credits from the Colorado Housing and Financing Authority (CHFA). We would like to apply again this year. In order to apply we need properly zoned land for our apartments. The site at 111 Emma Road is zoned PUD for our use, but we need an extension on the approvals to satisfy CHFA, our investor, and our bank. Our application is due to CHFA on June 2. We expect to hear about award in August and be able to close in the first quarter of 2017 and start construction next spring. With this timeframe, we are requesting a one year extension of the PUD approvals to allow us the needed time to complete this financing and bring new, affordable housing to Basalt.

Sincerely,

Jeffrey A. Ryan
Vice President of Development

**Town of Basalt, Colorado
Ordinance No. 17
Series of 2013**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, GRANTING A PUD AMENDMENT AND SITE SPECIFIC
DEVELOPMENT PLAN APPROVAL FOR THE ROARING FORK
APARTMENTS ON LOTS D-G, BASALT COMMERCIAL PARK
SUBDIVISION/PUD, BASALT, COLORADO**

RECITALS

A. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to grant approval of a PUD amendment site specific development plan to permit the construction of a multi-family residential building on Lots D-G, of the Basalt Commercial Park. RealAmerica Development LLC. ("Applicants") on behalf of the landowner Snow River Lodge Inc. submitted an application for a PUD amendment and site specific development plan in August of 2013. Said application is for property more particularly described in **Exhibit "A"** attached hereto.

B. At duly-noticed public hearings held on September 3, 2013, and September 17, 2013, the Planning and Zoning Commission considered the Application. At the public hearings, the Planning and Zoning Commission heard evidence and testimony as offered by the Town Staff, the Applicants, and members of the public. The Planning and Zoning Commission recommended approval of the Application with conditions.

C. At a duly-noticed public hearing on October 8, 2013, the Town Council approved this Ordinance on first reading, continued and scheduled a public hearing and second reading for this Ordinance for October 22, 2013, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

D. At a public hearing and second reading on October 22, 2013, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicants, and members of the public.

E. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

A. **FINDINGS.** The Town Council hereby incorporates by reference and conclusively makes the following findings:

1. Based on the evidence, testimony, exhibits, and comments from the public, Applicants and Town Staff, the Basalt Town Council finds and determines as follows in accordance with Town Code Article IV, Chapter 16 for the purpose of a PUD Amendment, Section 16-28 and Chapter 16 for the purposes of a Site Specific Development approval:

2. The application conforms to the provisions of Article 16 of the Town Code provided that the conditions contained in this ordinance are satisfied.

3. The development will not have an adverse environmental impact, such as excessively increasing traffic hazards or congestion, overloading utilities or otherwise being detrimental to the general welfare of the community.

4. The development will complement and be integrated with the existing and approved but not yet existing development in the area.

5. The development will provide numerous community benefits.

6. Based on the evidence, testimony, exhibits, and comments from the public, Applicants, Town Staff, and the Town P&Z, the Town Council finds and determines that the proposed development is generally consistent with the 2007 Basalt Master Plan, subject to compliance with the conditions contained herein.

B. **APPROVAL AND CONDITIONS OF APPROVAL.** The Town Council hereby approves the Roaring Fork Apartments PUD amendment and site specific development plan to construct a 56-unit apartment building on the property described as Lots D-G, Basalt Commercial Park, subject to the following conditions:

Representations:

1. The Applicants shall comply with all representations set forth in the Application.
2. The Applicants shall comply with all material representations made in hearings before the Planning and Zoning Commission and Town Council.

Community Benefits and Project Enhancements:

3. The Applicants shall satisfy the Community Housing requirements for this project as proposed, by deed restricting the units as follows:

Category 1 Rental Units- 13 One-bedroom units and 2 Two-bedroom units

Category 2 Rental Units- 20 One-bedroom units and 3 Two-bedroom units

Category 3 Rental Units- 13 One-bedroom units and 5 Two-bedroom units

The Special Housing Evaluation Committee as established in the Community Housing Guidelines may make minor adjustments to the Community Housing mix of categories. The Town Council may make adjustments to the mix of categories by ordinance in the event that the Applicants appeal the Special Housing Evaluation Committee's decision on a proposed adjustment to the categories or the Special Housing Evaluation Committee determines that it is not a minor change.

4. In the event that the Town amends the Town Code and accompanying guidelines in the future to establish an affordable housing credit system by which developments can sell off affordable housing credits to other development projects, this development will be eligible to sell off credits as permitted by those amendments.
5. The Applicants shall agree to be in a special district to help fund river and flood prevention improvements. While the district is not established at the present time, the concept would be that all development contribute to some extent to the funding of needed river improvements. This type of project would be assessed at a lesser extent than properties proposing development in the floodplain or adjacent to the river which benefit to a much greater extent by the improvements. Consideration will be given by the Town to reducing or waiving potential assessments on projects that include 100% affordable housing in establishing a future special district.
6. At the time of building permit, the development shall comply with the green building representations made in the Applicants' Final Plan Application, which includes compliance with the more restrictive of:
 - a) The 2012 International Green Construction Code (with the local amendments that are pending and the exceptions requested in the 9/3/13 Application Addendum). The Applicants shall also provide at

least 2% of the total energy used in the project through renewable forms of energy. The TRC may waive the renewable energy requirement after consultation with the Town's Building Official if compliance with the requirement is determined to be an unreasonable burden; or,

b) The Town's applicable green building requirements at the time of building permit issuance.

7. The Applicants shall attain a minimum Sound Transmission Class (STC) rating of 50.

Site Plan, Design, and Development Program:

8. The dimensional requirements for the project shall be as follows:

Dimensional Requirement	Proposed
Min. Lot Area	No Change from Prior Approvals
Overall Gross Square Footage	No Change from Prior Approvals
Building Height for Community Housing on Lots D-G, of the Basalt Commercial Park PUD	45 Feet as Measured by the Building Height Methodology in the Town Code
# of Stories for Community Housing Development on Lots D-G, of the Basalt Commercial Park PUD	4
Front Yard Setback	No Change from Prior Approvals
Rear Yard Setback	No Change from Prior Approvals
Side Yard Setback	No Change from Prior Approvals
FAR	No Change from Prior Approvals
Maximum Lot Coverage	No Change from Prior Approvals

Parking	Minimum of 116 Parking Spaces as Shown on the Parking Map included in the Roaring Fork Apartments PUD Amendment Application dated 7/9/13 (including 20 parking spaces to be constructed by the Applicants adjacent to Lot H)
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9. The Project is approved as a 100% deed-restricted affordable housing development. The use of deed-restricted community housing is permitted on the first floor of Lots D-G, of the Basalt Commercial Park. The Applicants shall prepare and record an amendment to the Basalt Commercial Park PUD Control Document establishing that deed restricted community housing shall be permitted on the first floor of Lots D-G and establishing a 45-foot height limit on Lots D-G for the development of deed-restricted community housing as an alternative use to the hotel.
10. The Applicants shall enforce a maximum occupancy requirement of two (2) people per 1-bedroom unit and four (4) people per 2-bedroom unit, except in temporary situations approved by the building management and the Town of Basalt. Additionally, the units shall comply with the requirements of Town code Section 16-203, *Renting of rooms*.

Engineering, Technical, and Site Plan Issues:

11. The Applicants shall address the Town's Consulting Engineer, SGM Inc. and the Town Public Works Director's Comments 1-3 in the letter provided by Chris Lehrman dated 9/9/13. These comments shall be addressed to the satisfaction of the Town Planner prior to recording a final site plan document.
12. The Applicants shall address the Basalt Sanitation District's comments in the letters provided by Denise Diers dated 8/14/13 and 6/8/10. These comments shall be addressed to the satisfaction of the Basalt Sanitation District prior to the issuance of a building permit.
13. The Applicants shall submit a request to CDOT to construct a primitive trail from the south side of Emma Road to the RFTA downvalley bus stop as shown on the landscaping plan included in the Roaring Fork Apartments PUD Amendment Application dated 7/9/13. The Applicants shall install the trail prior to the issuance of the first

certificate of occupancy on the Roaring Fork Apartments. The Applicants shall also submit a plan for bicycle storage for review and approval by the Town Planner prior to recording a Final PUD Site Plan.

14. The Applicants shall make the turning radius improvements on the west side of Emma Road between River Park Center and the Basalt Store Property as designed by Sopris Engineering on their Fire Truck Access Mitigation Plan dated 9/24/07. This improvement shall be made prior to the issuance of the first certificate of occupancy on the Roaring Fork Apartments Project. Additionally, the Applicants shall work with the owners of River Park Center and the Basalt Store to prepare a delivery plan designed to ensure that delivery vehicles are not blocking the access to the subdivision. The delivery plan shall be submitted for review and approval by the Town Planner and the Fire District prior to the issuance of the first certificate of occupancy on the Roaring Fork Apartments.

Parking and Signage:

15. There shall be no assigned parking spaces, except for handicap spaces. The Applicants shall sign the 12 parking spaces on the south side of Emma Road across from River Park Center as "No Overnight" parking. The Applicants shall also sign the 20 parking spaces that the Applicants are going to install on the north side of Emma Road adjacent to Lot H of the Basalt Commercial Park Subdivision for "No Overnight" parking. The Town shall retain the authority to sign, modify, add, or eliminate parking or loading areas designated within the roadway regardless of the provisions of this condition. Additionally, the Property Manager shall provide parking stickers to the residents when they enter into a lease so that the Town can track the parking situation.
16. Staff and the Applicants desire for the Applicants to construct more than the 116 parking spaces identified in Condition No. 8 if feasible. The Applicants shall study the potential for providing more than the 116 parking spaces identified in Condition No. 8 and submit a final parking plan for review and approval by the Town Planner prior to recording the Final PUD Site Plan.

Parkland Dedication:

17. The Applicants shall pay cash-in-lieu of dedicating parkland in an amount to be calculated by the Town Planner using the Town's policy in place for affordable housing at the time of building permit issuance, unless reduced or waived by a future action of the Town Council. Additionally, the Applicants may reduce or do in-kind improvements to

parks and open space in the area as approved by the Town Planner to satisfy the parkland requirements. In the event that the Applicants propose in-kind improvements to parks and open space, the Town Planner will keep an accounting of the monetary value of the in-kind improvements.

Landscaping and Irrigation:

18. The Applicants shall install landscaping per the landscaping plan prepared by Linden Group Architects dated 7/23/07. All landscaping shall be installed prior to the issuance of the first certificate of occupancy on the Roaring Fork Apartments. The Town Planner may issue extensions on the required timing for installation of landscaping due to weather. The Applicants shall contact the Town Horticulturist to inspect and approve of the landscaping specimens to be planted prior to their installation.
19. The Applicants shall submit a detailed irrigation plan for review and approval by the Town Planner after consultation with the Town Horticulturist prior to the installation of the irrigation.

Fees and Surcharges:

20. The Applicants shall pay all applicable School Land Dedication fees for affordable housing as calculated by the Town Planner unless recommended for waiver or reduction by the Roaring Fork School District. The Applicants shall obtain a letter from the School District recommending such a waiver by the time of building permit issuance if the school land dedication fees are to be waived.
21. The Applicants shall be required to pay the following fees and assessments as part of building permit submittal as required by the Town Code:
 - a. All building permit fees including the Special Improvements Fee, pursuant to Section 18-14 of the Town Code, as amended, unless reduced or waived by a future action of the Town Council;
 - b. All applicable water service surcharge fees, including the Southside Water Tank Surcharge, in effect pursuant to the Town Code at the time of any connection to the Town water system;
 - c. All outstanding land use review fees, including reimbursement

for the costs of Ehlers in conducting the financial review as part of the application;

- d. Any application and filing fees for future requests and submittals per the then applicable Town fee schedule and any new fees that may be required by the Town Code in Chapter 16, Zoning, or Chapter 17, Subdivision, as amended, after the vested rights period established herein. Also, any other fees or charges then - required pursuant to the Basalt Municipal Code for all applicants for building permits shall be paid unless reduced or waived by a future action of the Town Council.

Phasing and Final Approval Documents:

22. The Applicants shall enter into a Subdivision Improvement Agreement (SIA) with the Town within 180 days of the effective date of the Final Plan ordinance adopting the terms and conditions of the development and providing security for the common public improvements associated with the development. The Applicants shall also record with the Pitkin County Clerk and Recorder's Office within 180 days of the effective date of the Final Plan ordinance, a Final PUD Site Plan, an Amended PUD Control Document, and Deed Restrictions on the Community Housing Units. All of the Final Approval Documents listed above shall be reviewed by the Town Planner and Town Attorney for approval of form and content prior to recording. The Town Planner may extend the date by which the documents need to be recorded if the Applicants demonstrate that they are making progress towards finalizing the documents.

23. The Applicants shall provide financial security to replace the money being held in escrow from the current property owner, in a form acceptable to the Town Attorney, and in an amount equal to the financial security that is currently being held in escrow for the hotel development.

The Town may draw on the financial security posted for the public improvements to install any incomplete public improvements or restore the site to an acceptable condition if at any time after the commencement of construction activities, the Town Engineer determines that the project or a portion of the project has been abandoned. Abandonment for the purpose of administering this condition shall mean that the Applicants have started improvements, but have stopped all construction activities on the site for a period of more than six (6) months.

No more frequently than once every quarter, Applicants shall be entitled to partial releases or reductions of the Performance Guaranty as portions of the Improvements are completed and approved. In order to obtain a partial release or reduction of the Performance Guaranty, Applicants shall submit a Certificate of Partial Completion signed by an engineer licensed in the State of Colorado or other appropriate professional acceptable to the Town describing the portion of the Improvements completed, and the cost allocation associated with such completed improvements.

Vested Rights:

24. Vested property rights shall be granted for a period of three (3) years from the effective date of the ordinance approving the final development approvals, provided that the Applicants record the necessary documents established in Condition No. 22 within the 180 day recording period or as it may be amended. If the Applicants fail to record the approval documents in the recording period the site specific development plan approvals shall become void but the PUD zoning shall remain. Additionally, the current vested rights on the approved hotel development granted pursuant to Ordinance No. 6, Series of 2012 shall remain effective until they expire.
25. No changes are proposed to the existing Environmentally Sensitive Area (ESA) approvals for the site.

Amendments:

26. The Town Planner may review and approve of minor amendments to the approval documents necessary to effectuate the intent of the final development approvals. The Applicants shall have the ability to appeal a Town Planner decision on a minor amendment to the Town Council at a public meeting in which (15) days written notice of the public meeting has been provided to the appellants.
- C. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicants and the owners of the Property.
 - D. This Ordinance, after fully executed, shall be recorded in the office of the Pitkin County Clerk and Recorder.
 - E. The effective date of this ordinance shall be fourteen days after the final publication of the ordinance.

F. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON October 22, 2013 by a vote of 6 to 0 on October 8, 2013.

READ ON SECOND READING AND ADOPTED, by a vote of 6 to 1 on October 22, 2013.



TOWN OF BASALT, COLORADO

By:


Jacquie R. Whitsitt, Mayor

ATTEST:


Pamela K. Schilling, Town Clerk

Ord17_RoaringForkApartments
Bill to: 10-24-480

First Publication: Thursday, October 17, 2013
Final Publication: Thursday, October 31, 2013
Effective Date: Thursday, November 14, 2013

Exhibit "A"

Legal Description

Lots D-G, Basalt Commercial Park Subdivision/PUD as shown on the Plat recorded at Reception No. 536536 in the Pitkin County Records.

D) Ord 25, Series
of 2015

**Town of Basalt, Colorado
Ordinance No. 25
Series of 2015**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, GRANTING AN EXTENSION ON THE RECORDING DEADLINE
FOR THE ROARING FORK APARTMENTS LAND USE APPROVAL
DOCUMENTS, LOTS D, E, F, AND G, BASALT COMMERCIAL PARK,
BASALT, COLORADO (ALSO KNOWN AS 109, 113, 117, AND 121 EMMA
ROAD)**

RECITALS

A. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to extend the recording deadline for the approval documents for the Roaring Fork Apartments pursuant to Ordinance No. 17, Series of 2013. Real America ("Applicant") received approval pursuant to Ordinance No. 17, Series of 2013, to construct a 56-unit affordable housing project on Lots D-G, of the Basalt Commercial Park. The recording deadline for the approval documents has been extended several times by the Town Planner, but any additional extensions require approval by the Town Council. The Applicant has requested to further extend the recording deadline for the approval documents by an additional six (6) months.

B. As requested by the Applicant, the Town Staff recommends approval of the six (6) month extension of the approval document recording deadline.

C. At a public meeting held on November 10, 2015, the Town Council considered this Ordinance on first reading and set a public hearing and second reading for this Ordinance for November 24, 2015, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

D. At a public hearing and second reading on November 24, 2015, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public.

E. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. The Town Council finds and determines this Ordinance is reasonable and consistent with the Town Code. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF
THE TOWN OF BASALT, COLORADO AS FOLLOWS:**

A. FINDINGS. The Town Council hereby incorporates by reference and conclusively makes the above findings.

B. CONDITIONS.

1. The six-month extension of the deadline for the recording of approval documents on the Roaring Fork Apartments Project is hereby approved, subject to the following conditions:

a. The length of the extension shall be six (6) months from the effective date of this ordinance.

b. All other terms and conditions established in Ordinance No. 17, Series of 2013, shall remain in full force and effect.

c. The Applicant shall comply with all material representations made by the Applicant in the meetings before the Town Council.

C. MISCELLANEOUS.

1. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

2. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Pitkin County.

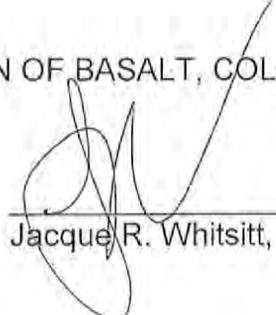
3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON November 24, 2015 by a vote of 5 to 0 on November 10, 2015.

READ ON SECOND READING AND ADOPTED, by a vote of 7 to 0 on
November 24, 2015.

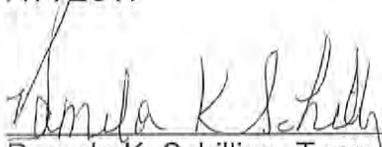
TOWN OF BASALT, COLORADO

By:



Jacques R. Whitsitt, Mayor

ATTEST:



Pamela K. Schilling, Town Clerk

Ord25-RoaringForkApartmentsExtension2015.doc

First Publication: Thursday, November 19, 2015
Final Publication: Thursday, December 3, 2015
Effective Date: Thursday, December 17, 2015



Town of Basalt
Accounts Payable
May 10, 2016

10A

GENERAL FUND

Reimbursable

Total Reimbursable 3,727.65

Non-reimbursable

Payroll 4/22/16, Health, Vision & Disability Insurance 135,716.96

Other Expenditures 86,182.01

Sub Total General Fund Non-reimbursable 221,898.97

TOTAL GENERAL FUND 225,626.62

Bond Fund: 2,829.18

Total Bond Fund 2,829.18

Conservation Trust Fund: 0.00

Total Conservation Trust Fund 0.00

Water Fund: 8,310.49

Total Water Fund 8,310.49

TOTAL ALL FUNDS 236,766.29

Report Criteria:

Report type: GL detail

Check Detail Amount = (<>) 0

GL Period	Check Issue Date	Check Number	Payee	Invoice Number	Invoice GL Account	Check Amount
05/16	05/10/2016	37804	AED AUTHORITY	18891	10-66-430	875.00
05/16	05/10/2016	37805	AFLAC	783733	10-22760	453.83
05/16	05/10/2016	37806	ALERT/SAM	2016 D	10-54-570	80.00
05/16	05/10/2016	37807	ALPINE BANK	HSA 4/	10-22776	799.30
05/16	05/10/2016	37808	AMERIGAS	305145	10-50-435	294.17
05/16	05/10/2016	37808	AMERIGAS	305145	10-50-435	332.89
05/16	05/10/2016	37809	ANALYTICAL TECHNOLOGY, IN	127249	51-72-405	87.50
05/16	05/10/2016	37810	ASPEN MAINTENANCE SUPPLY	306835	10-50-600	135.33
05/16	05/10/2016	37811	AVALANCHE EXCAVATION	LEAKI	51-73-390	1,704.00
05/16	05/10/2016	37812	BASALT CHAMBER OF COMME	BASAL	10-41-675	3,542.41
05/16	05/10/2016	37813	BEAR BOP PRESS	FLAG F	10-64-350	240.00
05/16	05/10/2016	37814	BIG JIG ENTERTAINMENT	SUMM	10-41-675	11,000.00
05/16	05/10/2016	37815	BSN SPORTS, LLC	978110	10-64-665	313.92
05/16	05/10/2016	37816	CASELLE	72720	51-45-325	436.92
05/16	05/10/2016	37816	CASELLE	72720	10-45-325	466.71
05/16	05/10/2016	37816	CASELLE	72720	10-42-325	89.37
05/16	05/10/2016	37817	CAUSEY & HOWARD LLC	3642	10-42-310	287.50
05/16	05/10/2016	37818	CENTURY LINK	970-92	51-45-530	223.20
05/16	05/10/2016	37818	CENTURY LINK	970-92	10-66-530	31.15
05/16	05/10/2016	37819	JOHN COLLINS, ESQ.	MAY 2	10-42-310	800.00
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-41-670	528.00
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-45-230	3,209.95
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-47-230	3,249.95
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-50-230	3,288.90
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-54-231	13,585.65
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-58-230	1,745.95
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-61-230	24.70
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-60-230	12.35
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-62-230	2,126.95
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-64-230	1,428.95
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	10-70-230	528.00
05/16	05/10/2016	37820	COLO. EMPLOYER BENEFIT TR	MAY 2	51-45-230	2,886.25
05/16	05/10/2016	37821	COLORADO ACTIVITY CENTER	21015	10-41-670	635.00
05/16	05/10/2016	37822	COLORADO ANALYTICAL LABO	160406	51-72-405	35.00
05/16	05/10/2016	37823	COLORADO BUREAU OF INVES	TI6090	10-54-370	30.00
05/16	05/10/2016	37824	COLORADO GOES BAZAAR LL	SUNDA	10-41-675	750.00
05/16	05/10/2016	37825	COMPUTER SPECIALISTS	4723	10-45-390	630.00
05/16	05/10/2016	37825	COMPUTER SPECIALISTS	4733	10-45-390	900.00
05/16	05/10/2016	37826	CONNECT ONE DESIGN, LLC	1152	10-47-330	105.00
05/16	05/10/2016	37826	CONNECT ONE DESIGN, LLC	1182	10-75-700	390.00
05/16	05/10/2016	37827	CPS DISTRIBUTORS INC	225492	10-70-430	366.19
05/16	05/10/2016	37828	DEPARTMENT OF LABOR	624902	10-50-350	25.00
05/16	05/10/2016	37829	DHM DESIGN CORPORATION	31834	31-40-315	2,829.18
05/16	05/10/2016	37829	DHM DESIGN CORPORATION	31835	10-47-330	4,795.29
05/16	05/10/2016	37830	FAMILY SUPPORT REGISTRY	BLEVI	10-22770	240.00
05/16	05/10/2016	37830	FAMILY SUPPORT REGISTRY	MARTI	10-22770	200.00
05/16	05/10/2016	37830	FAMILY SUPPORT REGISTRY	SANTI	10-22770	54.16
05/16	05/10/2016	37831	FEDEX	5-399-3	10-45-615	39.58
05/16	05/10/2016	37832	MAURINE FITZPATRICK	SPRIN	10-64-350	288.00
05/16	05/10/2016	37833	FLORIDA DEPARTMENT OF RE	SANTI	10-22770	271.20
05/16	05/10/2016	37834	FRAN SUJTER	GARDE	10-24505	200.82
05/16	05/10/2016	37835	GALLS, LLC	005180	10-54-610	494.04

GL Period	Check Issue Date	Check Number	Payee	Invoice Number	Invoice GL Account	Check Amount
05/16	05/10/2016	37836	GEORGE T SANDERS CO	136082	10-70-440	112.82
05/16	05/10/2016	37837	GLENWOOD SPRINGS FORD	45854	10-54-690	123.80
05/16	05/10/2016	37838	GREAT AMERICA FINANCIAL S	186257	10-50-530	596.66
05/16	05/10/2016	37839	HACH COMPANY	988836	51-72-405	207.69
05/16	05/10/2016	37840	HOLY CROSS ENERGY ASSOC.	MAY 2	10-50-410	808.12
05/16	05/10/2016	37840	HOLY CROSS ENERGY ASSOC.	MAY 2	10-60-412	831.49
05/16	05/10/2016	37840	HOLY CROSS ENERGY ASSOC.	MAY 2	10-70-410	39.16
05/16	05/10/2016	37840	HOLY CROSS ENERGY ASSOC.	MAY 2	51-71-410	88.14
05/16	05/10/2016	37841	JOYAL PAINTING, INC.	0724	10-63-700	820.00
05/16	05/10/2016	37842	JUDITH LOVEJOY	RESTIT	10-42-390	440.16
05/16	05/10/2016	37843	KILGORE COMPANIES	335184	10-50-435	149.59
05/16	05/10/2016	37843	KILGORE COMPANIES	335289	10-50-600	72.75
05/16	05/10/2016	37844	LEAF	645906	10-45-740	276.00
05/16	05/10/2016	37845	LORIS & ASSOCIATES, INC.	10015	10-75-700	2,985.00
05/16	05/10/2016	37845	LORIS & ASSOCIATES, INC.	10015	10-47-330	2,985.00
05/16	05/10/2016	37846	MICHAEL J. KINSLEY	127	10-41-670	1,000.00
05/16	05/10/2016	37847	MID VALLEY METRO	MAY 2	10-70-410	145.60
05/16	05/10/2016	37847	MID VALLEY METRO	MAY 2	10-50-410	147.77
05/16	05/10/2016	37848	Mountain Pest Control	102898	10-50-435	75.00
05/16	05/10/2016	37849	MOUNTAIN STATES EMPLOYE	61492	10-45-570	5,200.00
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	006995	10-70-420	87.21
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	323688	10-64-420	145.00
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	324868	10-64-420	150.00
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	332372	10-64-420	150.00
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	340372	10-64-420	155.90
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	348501	10-64-420	150.00
05/16	05/10/2016	37850	MOUNTAIN WASTE & RECYCLI	74863	10-70-420	170.00
05/16	05/10/2016	37851	NAPA AUTO PARTS	156732	10-75-700	32.72
05/16	05/10/2016	37851	NAPA AUTO PARTS	156762	10-75-700	32.72
05/16	05/10/2016	37851	NAPA AUTO PARTS	157057	10-60-431	40.32
05/16	05/10/2016	37851	NAPA AUTO PARTS	158757	10-61-580	111.87
05/16	05/10/2016	37852	PEAK PERFORMANCE IMAGIN	4781	10-45-700	1,940.00
05/16	05/10/2016	37853	PECK FEIGENBAUM PC	1499	10-45-310	787.50
05/16	05/10/2016	37854	PINNACOL ASSURANCE	180372	10-45-520	13,211.00
05/16	05/10/2016	37855	PRIMA PLANT SERVICES	119137	10-70-710	200.00
05/16	05/10/2016	37856	PRO FORCE LAW ENFORCEME	271566	10-54-600	88.10
05/16	05/10/2016	37857	PRO VELOCITY	15647	10-45-740	775.00
05/16	05/10/2016	37858	ROBERT PETERS	UNIFO	10-64-610	922.00
05/16	05/10/2016	37859	Sandy's Office Supply	173413	10-54-600	11.05
05/16	05/10/2016	37860	SCHMUESER GORDON MEYER	03125A	10-24128	690.00
05/16	05/10/2016	37860	SCHMUESER GORDON MEYER	03125A	10-24350	69.00
05/16	05/10/2016	37860	SCHMUESER GORDON MEYER	2014-4	10-60-700	6,105.00
05/16	05/10/2016	37861	SCHWENER DESIGN GROUP	15-054	10-75-700	1,572.90
05/16	05/10/2016	37862	SOPRIS ENGINEERING	110449	10-41-670	521.00
05/16	05/10/2016	37863	SUMMIT PAINT & DECORATING	AP638	10-66-430	22.91
05/16	05/10/2016	37863	SUMMIT PAINT & DECORATING	AP638	10-70-440	54.14
05/16	05/10/2016	37863	SUMMIT PAINT & DECORATING	AP638	10-50-435	35.95
05/16	05/10/2016	37864	SYMBION DESIGN, INC.	2016-0	10-47-330	190.00
05/16	05/10/2016	37865	TG MALLOY CONSULTING, LLC	201602	10-47-330	255.75
05/16	05/10/2016	37866	THREE BEARS INN LTD	2990	10-41-670	2,000.00
05/16	05/10/2016	37867	TIMBER LINE ELECTRIC & CON	18895	51-45-325	1,120.00
05/16	05/10/2016	37888	UNCC	216041	51-73-390	27.17
05/16	05/10/2016	37869	UNILINK	098192	10-45-740	80.78
05/16	05/10/2016	37869	UNILINK	098193	10-45-740	30.06
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-45-230	300.54
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-47-230	226.58

GL Period	Check Issue Date	Check Number	Payee	Invoice Number	Invoice GL Account	Check Amount
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-54-231	48.08
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-58-230	78.46
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-81-230	32.50
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-60-230	16.25
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-50-230	76.73
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-62-230	146.86
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-70-230	41.56
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	10-84-230	51.83
05/16	05/10/2016	37870	UNION SECURITY INSURANCE	MAY 2	51-45-230	112.14
05/16	05/10/2016	37871	US Bank	302893	10-45-740	214.13
05/16	05/10/2016	37872	UTILITY TECHINCAL	7767	51-73-390	1,280.03
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	58495	10-60-600	54.60
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	58798	10-70-600	4.99
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59011	10-70-600	18.99
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59307	10-63-430	6.49
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59307	10-61-850	15.98
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59330	10-70-600	3.98
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59362	10-75-700	6.08
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59496	10-60-600	10.49
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59504	51-73-600	23.97
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59538	10-60-431	4.81
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59563	10-70-430	64.37
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59637	10-70-430	23.55
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59756	10-60-600	47.91
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	59800	10-60-600	32.96
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60027	10-50-435	15.99
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60027	10-66-600	1.98
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60236	10-66-430	16.96
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60326	51-72-430	14.99
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60419	10-70-430	7.31
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60502	10-70-430	2.58
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60532	10-70-430	1.49
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60589	10-70-430	12.36
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60620	10-60-600	11.99
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	60948	10-60-600	84.99
05/16	05/10/2016	37873	VALLEY LUMBER COMPANY	61123	10-50-435	7.36
05/16	05/10/2016	37874	VALLEY PINES CONDO ASSOC.	5920	10-50-435	374.37
05/16	05/10/2016	37875	VERIZON WIRELESS	976381	10-36-650	59.34
05/16	05/10/2016	37875	VERIZON WIRELESS	976381	10-45-530	20.46
05/16	05/10/2016	37875	VERIZON WIRELESS	976381	10-58-530	40.01
05/16	05/10/2016	37875	VERIZON WIRELESS	976381	51-45-530	37.27
05/16	05/10/2016	37875	VERIZON WIRELESS	976383	10-54-530	475.50
05/16	05/10/2016	37876	VILLAS @ ELK RUN HOMEOWN	ACCT #	10-50-435	512.69
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-45-230	35.64
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-47-230	36.84
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-54-231	175.77
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-58-230	20.82
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-81-230	2.01
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-60-230	3.00
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-62-230	27.63
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-64-230	11.61
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-50-230	20.82
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	51-45-230	26.22
05/16	05/10/2016	37877	VISION SERVICE PLAN	MAY 2	10-70-230	8.01
05/16	05/10/2016	37878	MATT WAGNER	REIMB	10-62-590	20.28
05/16	05/10/2016	37879	WASTE MANAGEMENT	089684	10-45-395	1,944.41

GL Period	Check Issue Date	Check Number	Payee	Invoice Number	Invoice GL Account	Check Amount
05/16	05/10/2016	37879	WASTE MANAGEMENT	089685	10-50-415	109.20
05/16	05/10/2016	37880	WILL CORPORATION	313	10-41-670	852.50
Grand Totals:						125,046.12

Summary by General Ledger Account Number

GL Account	Debit	Credit	Proof
1020200	.00	125,046.12-	125,046.12-
10-22760	453.83	.00	453.83
10-22770	765.36	.00	765.36
10-22775	799.30	.00	799.30
10-24128	690.00	.00	690.00
10-24350	69.00	.00	69.00
10-24505	200.82	.00	200.82
10-36-650	59.34	.00	59.34
10-41-670	5,536.50	.00	5,536.50
10-41-675	15,292.41	.00	15,292.41
10-42-310	1,087.50	.00	1,087.50
10-42-325	89.37	.00	89.37
10-42-390	440.16	.00	440.16
10-45-230	3,546.13	.00	3,546.13
10-45-310	787.50	.00	787.50
10-45-325	466.71	.00	466.71
10-45-390	1,530.00	.00	1,530.00
10-45-395	1,944.41	.00	1,944.41
10-45-520	13,211.00	.00	13,211.00
10-45-530	20.46	.00	20.46
10-45-570	5,200.00	.00	5,200.00
10-45-615	39.58	.00	39.58
10-45-700	1,940.00	.00	1,940.00
10-45-740	1,375.97	.00	1,375.97
10-47-230	3,513.37	.00	3,513.37
10-47-330	8,331.04	.00	8,331.04
10-50-230	3,386.45	.00	3,386.45
10-50-350	25.00	.00	25.00
10-50-410	955.89	.00	955.89
10-50-415	109.20	.00	109.20
10-50-435	1,798.01	.00	1,798.01
10-50-530	596.66	.00	596.66
10-50-600	208.08	.00	208.08
10-54-231	13,809.50	.00	13,809.50
10-54-370	30.00	.00	30.00
10-54-530	475.50	.00	475.50
10-54-570	80.00	.00	80.00
10-54-600	79.15	.00	79.15
10-54-610	494.04	.00	494.04
10-54-690	123.80	.00	123.80
10-58-230	1,845.23	.00	1,845.23
10-58-530	40.01	.00	40.01
10-60-230	31.80	.00	31.80
10-60-412	831.49	.00	831.49
10-80-431	45.13	.00	45.13

GL Account	Debit	Credit	Proof
10-60-600	242.94	.00	242.94
10-60-700	6,105.00	.00	6,105.00
10-61-230	59.21	.00	59.21
10-61-580	111.87	.00	111.87
10-61-650	15.98	.00	15.98
10-62-230	2,301.44	.00	2,301.44
10-62-590	20.28	.00	20.28
10-63-430	6.49	.00	6.49
10-63-700	820.00	.00	820.00
10-64-230	1,492.39	.00	1,492.39
10-64-350	528.00	.00	528.00
10-64-420	750.90	.00	750.90
10-64-610	922.00	.00	922.00
10-64-665	313.92	.00	313.92
10-66-430	914.87	.00	914.87
10-66-530	31.15	.00	31.15
10-66-600	1.98	.00	1.98
10-70-230	577.57	.00	577.57
10-70-410	184.76	.00	184.76
10-70-420	257.21	.00	257.21
10-70-430	479.85	.00	479.85
10-70-440	166.76	.00	166.76
10-70-800	27.96	.00	27.96
10-70-710	200.00	.00	200.00
10-75-700	5,019.42	.00	5,019.42
31-40-315	2,829.18	.00	2,829.18
51-45-230	3,024.61	.00	3,024.61
51-45-325	1,556.92	.00	1,556.92
51-45-530	260.47	.00	260.47
51-71-410	88.14	.00	88.14
51-72-405	330.19	.00	330.19
51-72-430	14.99	.00	14.99
51-73-390	3,011.20	.00	3,011.20
51-73-600	23.97	.00	23.97
Grand Totals:	125,046.12	125,046.12-	.00

Report Criteria:

Report type: GL detail
 Check Detail.Amount = {<->} 0

2016 Council Calendar

Potential Upcoming Schedules – Subject to Change

5/24/16 Worksession and Legislative

WORK SESSION AND POSSIBLE AGENDA ITEM

5:30 AFFORDABLE HOUSING POLICY: number of units, who resides, who selected, how administered
45 minutes (Staff suggestion: this should also be a continuation of discussion on CDC Development and River Park)

- Consent -Special Event Activity Permit for Triangle Park Special Event
- Worksession - Introduce Green Team's Recycling Ordinance 10-30 min
- Basalt Public Arts Commission (BPAC): Information Item
- 1st Reading 309 Sopris Special Review- 15 min
- 1st Reading Rescind Special Review 234 Midland – 5 min
- 2nd Reading Real America Extension - 5 min

6/14/2016

WORK SESSION

5:30 PAN AND FORK-

- Worksession and Resolution – TACAW extension (Performance deadline is June 30) unconfirmed – 15 min
- CSC Zone District discussion if necessary unconfirmed 30+ min
- 1st Reading Recycling Ordinance – 15 min

6/24/16 Council Retreat to be rescheduled

6/28/16

WORK SESSION

5:30 NEIGHBORHOOD CAUCUS (include Joe Edwards, George Newman) – 30 + min

- CSC Zone District discussion – potential unconfirmed 30+
- Public Hearing and Resolution Basalt Mini Storage – Davidco in Southside – Sketch Plan review 30+
- 2nd Reading Ordinance - Rescind Special Review 234 Midland – 5 min
- 2st Reading -309 Sopris Special Review 15 minutes

7/12/16

- CSC Zone District Discussion – potential 30+
- Council discussion expenditures for River Park per Resolution No. 4 - Possible 1st Reading of Ordinance for funding & possible bond unconfirmed 2 hours

PARTIAL LIST OF COUNCIL PRIORITIES -

Child Care and Regional Child care
Housing Parcels-get builder
Community Survey
Economics of Special events
Regional healthcare
Arts and performing arts related to the economy

Council's Schedule

(with Staff's suggestions)

Council members on BACH, BPAC, POST, GREEN TEAM, CHAMBER, Etc
Presentations to Council from these committees
Urban renewal at Clarks
Willits intersection
Way finding
Changing big boxes to small businesses

LAND USE APPLICATIONS – to be scheduled when and if ready

Arbaney Kittle PUD Amendment- Pursuant to pre-development agreement
Roaring Fork Conservancy LU & Development Agreement – pursuant to pre-development agreement
River Park ESA and Site Plan Approvals
RF Club Suites – minor PUD Amendment
Town Park Arts Parcel – TACAW Approvals
Basalt Mini-Storage Expansion Sketch Plan
Stott's Mill PUD Amend and Reinstate & Sketch Plan
150 W. Homestead Rezoning and Sketch Plan (Elice)

TO BE SCHEDULED

Police Emergency Services Dispatch
BACH and Affordable Housing
Adopting the 5 Yr Capital Improvements Plan
Valley Rd/El Jebel Road Alignment
Update from Green Team
Code amendment Chapter 8 – Parking rules
Public Works Manual
Joint Meetings with Pitkin County and Eagle County Commissioners
TACAW Worksession
Amend CSC Zone District Schedule after Council direction
Worksession – BDBA
Worksession – Chamber
BPAC Request for Agenda Time to present Proposed Art Installation Project

Basalt Town Council, Mayor Whitsitt, and Town Manager Scanlon:

We would like to urge each of you to promptly support the proposal to provide space for Butch's Lobster Shack on the town-owned roadway, on the north side of the pedestrian bridge near the 7-Eleven. This alternative was cited in the May 5, 2016 Aspen times article by Scott Condon.

Butch's has been a hugely popular venue for both Basalt residents and patrons from up and down the Roaring Fork Valley – one that was sorely missed last year. Your support would not only bring back a much valued amenity to the town, but would also be a visible sign of our new Town Council listening to and responding to the call to enhance Downtown Basalt's vitality.

Please act quickly to ensure Butch's Lobster Shack is available this summer!

Marge & Doug MacDonald

Basalt

May 6, 2016