

**TOWN OF LYONS, COLORADO  
RESOLUTION 2020-53**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO APPROVING A CONSTRUCTION  
AGREEMENT FOR PROJECT: 20-RDWY-01 ROADWAY REPAIRS – FLOOD RECOVERY  
PROJECT WITH ASPHALT SPECIALTIES COMPANY, INC.**

**WHEREAS**, the Town of Lyons ("Town") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

**WHEREAS**, the Town desires to enter into a contract for the Roadway Repairs – Flood Recovery Project: Project 20-RDWY-01; and

**WHEREAS**, The scope of work for this project includes construction of new curbs and gutters, storm drainage improvements, and asphalt repaving. Town roads will also be upgraded in conformance with Town and County standards, including making the roads wider, adding curbs and gutters, and adding a storm drainage system. Town and County standards were established to help minimize future flooding and damage and improve roadway resiliency.

**WHEREAS**, The following Town roads are included in the scope of work and are to be funded in priority order, as CDBG-DR funding availability allows. Maps have been provided in Exhibit 1.

1. 2nd Avenue from the wastewater treatment plant to McConnell Drive
2. 2nd Avenue from Main Street to Park Street
3. 3rd Avenue from Main Street to Broadway
4. 4th Avenue from Main Street to Broadway
5. McConnell Drive from McConnell Bridge to 2nd Avenue
6. Evans Street from 2<sup>nd</sup> Avenue to 3<sup>rd</sup> Avenue
7. 3<sup>rd</sup> Avenue from Broadway to Evans Street
8. Evans Street from 3rd Avenue to 4th Avenue
9. 4<sup>th</sup> Ave from Broadway to Evans St.

**WHEREAS**, the Town has obtained funding for the Project from the Federal Emergency Management Agency ("FEMA") under PW 1078 and the Department of Housing and Urban Development Community Development Block Grant Disaster Recovery ("CDBG-DR") administered by the Boulder County Collaborative under the Intergovernmental Agreement between the Town of Lyons and the City of Longmont (INF-00054); and

**WHEREAS**, the Town advertised the Invitation for Bid on BidNet and OEDIT on March 4, 2020 and received three bids by the due date of March 24, 2020; and

**WHEREAS**, Town Staff evaluated the bids received to determine the scope of work and cost are both reasonable and necessary for the Project; and

**WHEREAS**, the Town Staff and the Town Engineer recommend that the Town award the Agreement for work based on the Contractor's Bid; and

**WHEREAS**, the Board, after full consideration of the proposed agreement and the recommendation of the Town Staff and the Town Engineer, finds that the bid submitted by Asphalt Specialties Company, Inc. (the "Contractor") qualifies that company as the lowest, qualified

bidder; and

**WHEREAS**, the Town Board of Trustees desires to approve the Construction Agreement in substantially the form attached hereto as **Exhibit 2** for the not-to-exceed amount of **ONE MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED SEVENTY-SEVEN DOLLARS AND NINE CENTS (\$1,275,277.09)** to have the Contractor perform the work described in Construction Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO:**

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby:

- (a) Approves the Construction Agreement for the Project in substantially the form attached as **Exhibit 2**.
- (b) Approves the Construction Agreement for a total not-to-exceed amount of **ONE MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED SEVENTY-SEVEN DOLLARS AND NINE CENTS (\$1,275,277.09)** in substantially the form attached hereto.
- (c) Authorizes the Town Administrator and the Town Attorney, in consultation with the Mayor, to make such changes as may be necessary to correct any non-material errors or language in the Construction Services Agreement that does not increase the obligations of the Town.
- (d) Authorizes Town Staff to complete and send to the Contractor the completed Construction Agreement for review and signature.
- (e) Authorizes the Mayor or Mayor Pro Term to execute the complete Construction Agreement on behalf of the Town after Contractor has signed the Construction Agreement and the Town Clerk to attest such signature.

Section 3. This resolution shall take effect immediately upon adoption.

**ADOPTED this 30<sup>th</sup> day of March, 2020.**

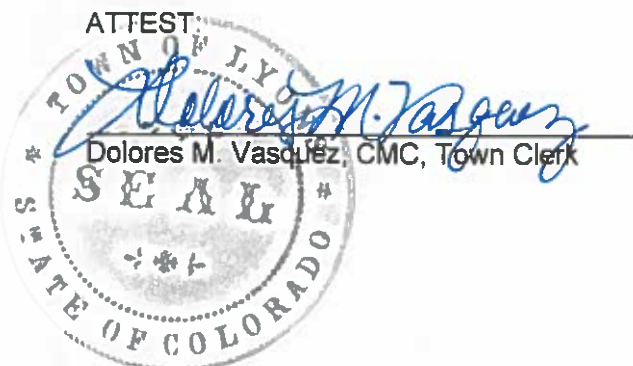
TOWN OF LYONS:

Connie Sullivan

Connie Sullivan (Apr 9, 2020)

Connie Sullivan, Mayor

ATTEST:



## **EXHIBIT 1 – MAPS**

**EXHIBIT 2 – ASPHALT SPECIALTIES, INC. CONTRACT**






# 2020-53 RDWY-FR\_Construction\_V2

Final Audit Report

2020-04-09

Created:	2020-04-08
By:	Town of Lyons (recreation@townoflyons.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABQ3pJ0tXR7adl99eklNQ164l0X2yBu3R

## "2020-53 RDWY-FR\_Construction\_V2" History

-  Document created by Town of Lyons (recreation@townoflyons.com)  
2020-04-08 - 9:49:33 PM GMT - IP address: 65.101.227.171
-  Document emailed to Connie Sullivan (csullivan@townoflyons.com) for signature  
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-  Email viewed by Connie Sullivan (csullivan@townoflyons.com)  
2020-04-09 - 12:39:03 PM GMT - IP address: 65.113.156.32
-  Document e-signed by Connie Sullivan (csullivan@townoflyons.com)  
Signature Date: 2020-04-09 - 12:39:40 PM GMT - Time Source: server- IP address: 65.113.156.32
-  Signed document emailed to Connie Sullivan (csullivan@townoflyons.com) and Town of Lyons (recreation@townoflyons.com)  
2020-04-09 - 12:39:40 PM GMT



Adobe Sign

**TOWN OF LYONS, COLORADO  
CONSTRUCTION AGREEMENT  
Project Number 20-RDWY-01 ("Project")**

This AGREEMENT is made and entered into this 30<sup>th</sup> day of March, 2020, by and between the TOWN OF LYONS, COLORADO, a municipal corporation of the State of Colorado, with offices at 432 5<sup>th</sup> Avenue, Lyons, Colorado 80540 (the "Town" or "Owner"), and Asphalt Specialties Company, Inc., whose address is 10100 Dallas Street Henderson, CO 80640 (the "Contractor").

**WITNESSETH**

WHEREAS, the Town desires to obtain all necessary components to complete the scope of work for a Bid Pack No. 20-RDWY-FR-01 (PW 1078) ("Bid Pack") issued by the Town; and

WHEREAS, in response to the Bid Pack, the Town received bids or proposals, including one from the Contractor ("Bid Proposal"); and

WHEREAS, the Town has reviewed the Bid Proposal from the Contractor for the completion of said work, and the Town finds said Bid Proposal acceptable and deems it the lowest responsible and responsive Bid proposal received; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement and all other Contract Documents.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows by and between the Town and the Contractor that the Contractor shall perform the following:

**THE PARTIES AGREE AS FOLLOWS:**

**1.00 SCOPE OF WORK:** The Contractor will furnish all tools, equipment, machinery, materials, supplies, superintendence, insurance, transportation, other construction accessories, and services specified or required to be incorporated in and form a permanent part of the construction and completion of the work proposed to be done under this Agreement ("Work" or "Scope of Work"). In addition, the Contractor shall provide and perform all necessary labor in a first-class and workmanlike manner and in accordance with the conditions and prices stated in the Bid Proposal and the requirements, stipulations, provisions, and conditions of the Contract Documents and Design Documents, including Plans and Specifications, as defined in the attached General Conditions. The Contractor shall further perform, execute, construct, and complete all things mentioned to be done by the Contractor and all work covered by the Owner's official award of this contract to the Contractor, such award being based on the acceptance by the Owner of the Contractor's bid, or part thereof.

**2.00 THE CONTRACT DOCUMENTS:** This Agreement incorporates all the Contract Documents, which together represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, written or oral representations, and agreements. The Contract Documents consist of this Construction Agreement, which Agreement also incorporates by this reference all of the instruments set forth in the Project Manual and Bid Documents as fully as if they were set forth in this Agreement in full. The documents consist of without limitation, the following documents:

1. Invitation to Bid and Instructions to Bidders
2. Contractor's Bid Form (with Unit Pricing as indicated)
3. This Construction Agreement and any Addendums or Attachments thereto including (if checked)
  - ☒ Attachment A, Federal Emergency Management Agency's ("FEMA") Grant Program Requirements for Procurement Contracts if FEMA funding is used for the Work
  - ☒ Attachment B, Colorado Community Development Block Grant Disaster Recovery Program funds (hereinafter referred to as CDBG-DR funds) Requirements for Contracts if CDBG-DR funding is used for the Work
4. Performance and Payment Bond
5. Bid Proposal
6. Notice of Award

7. Notice to Proceed
8. Bid Bond (Minimum 5% equivalent of the Bid Proposal price or as otherwise set forth in the Bid Bond form provided as part of the Bid Pack)
9. General Conditions
10. The Following Documents if the Box is Checked:
  - ☐ Special Provisions
  - ☒ Design Documents, including all Drawings and Plans
  - ☐ Specifications
  - ☐ Addendums to Specifications and Standards
  - ☒ Town of Lyons Manual of Design Criteria and Standard Specifications
  - ☐ Change Orders, Field Orders or other similar revisions properly authorized after the execution of this Agreement
  - ☐ Others: \_\_\_\_\_

**3.00 TIME AND COMMENCEMENT OF COMPLETION:** This Agreement shall commence as of the date the Agreement is fully executed by both parties and shall continue through **11:59 PM July 31, 2020**, or until the Scope of Work is completed.

**4.00 LIQUIDATED DAMAGES:** All time limits stated in this Agreement and the Contract Documents are of the essence of the Agreement. The Town and Contractor recognize the completion of the work as shown in the contractual time frame, or as extended, is important to the ongoing operations of the Town and its citizens. They also recognize that delays include expenses to the Town for extended manpower commitments, outside consultant commitments, and potentially other legal fees to extend the project beyond the expected time period.

- ☒ If this box is checked, in lieu of requiring any such proof and backup for such expenses, Contractor agrees that liquidated damages (not penalties) may be assessed by the Owner in the sum of **\$250.00 per day** for each day after the contract time frame expires
- ☐ If this box is checked, in addition to or in lieu of the daily damages (if checked above), Contractor agrees that lump sum liquidated damages (not penalties) may be assessed by the Town in a lump sum payment of \$\_\_\_\_\_.00 if the work is not completed by \_\_\_\_\_, 20\_\_\_\_.

**5.00 CONTRACT SUM AND PAYMENT:** The Owner shall pay to the Contractor for performance of the Work encompassed by this Agreement, and the Contractor will accept as full compensation therefore the sum of: *One Million Two Hundred Seventy-Five Thousand Two Hundred Seventy-Seven DOLLARS and 09/100 DOLLARS (\$1,275,277.09)* subject to adjustment as provided by the Contract Documents ("Contract Price"). The Town has appropriated sufficient funds for completion of this Work.

- a. Monthly, partial, progress payments shall be made by the Town to the Contractor for the percentage of the Work completed, subject to inspection by Town staff to verify percentage of completion. The Town alone shall determine when work has been completed and progress payments shall not constitute a waiver of the right of the Town to require the fulfillment of all terms of this Agreement and the delivery of all improvements embraced in this Agreement in a complete and satisfactory manner to the Town in all details. The Town, before making any payment, may require the Contractor to furnish releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the Town's interest. The Town, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.
- b. By the 15<sup>th</sup> day of each month, Contractor shall submit to the Town for review and approval, an application for payment fully completed and signed by Contractor covering the work completed through the last day of the prior month and accompanied by such supporting documentation as is required by these

Contract Documents, including without limitation, time sheets, invoices, receipts, bills of lading, and all other documents the Town may require. **These invoices for payment should be emailed to ap@townoflyons.com or mailed to Town of Lyons, P.O. Box 49, Lyons, CO 80540.** Materials on hand but not complete in place may or may not be included for payment at the discretion of the Town. Each subsequent application for payment shall include an affidavit of Contractor providing 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. Notwithstanding the progress payments, it is the intent and purpose of the Town to withhold at least five percent (5%) of payments to Contractor for any contract exceeding One Hundred Fifty Thousand Dollars (\$150,000.00) in accordance with Article 91, Title 24, C.R.S.

**6.00 ACCEPTANCE AND FINAL PAYMENT:** Final payment may be requested by the Contractor upon completion and acceptance, by the Town, of all work as set forth in the Contract Documents. The total amount of final payment shall consist of the Contract Price, as adjusted in accordance with approved change orders, if applicable, less all previous payments to the Contractor.

**7.00 MODIFICATIONS AND AMENDMENTS:** Should work beyond that described in the Contract Documents be required, it will be paid for as extra work at a cost to be agreed upon in separate written agreement by the Town and the Contractor prior to commencement of the additional work. Such additional agreements shall be executed and approved by all persons required by Town purchasing ordinances or policies. Unless specifically excluded, such written agreements shall be considered part of the Contract Documents.

**8.00 CONTRACTOR'S REPRESENTATIONS:** In order to induce the Town to enter into this Agreement, the Contractor makes the following representations:

a. The Contractor has familiarized itself with the nature and the extent of the Contract Documents, Scope of Work, the locality, all physical characteristics of the area of the work within the Scope of Work, including without limitation, improvements, soil conditions, drainage, topography, and all other features of the terrain, and with the 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, or apply in any manner whatsoever to the work.

b. Contractor has carefully considered all physical conditions at the site and existing facilities affecting cost, progress, or performance of the work.

c. Contractor has given the Town written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and such documents are acceptable to the Contractor.

d. Contractor shall not extend the credit or faith of the Owner to any other persons or organizations.

**9.00 INSURANCE:** Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all obligations assumed by the Contractor pursuant to this Agreement. Contractor shall not commence work under this Agreement until it has obtained all said insurance required by the Contract Documents and such insurance has been approved by the Town. The Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the Contractor must continuously maintain the insurance coverage required in this section, with the minimum insurance coverage listed below:

a. Worker's Compensation in accordance with the Worker's Compensation Act of the State of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract.

b. Comprehensive General liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per each occurrence, AND ONE MILLION DOLLARS (\$1,000,000) aggregate, plus an additional amount sufficient to pay related attorneys' fees and defense costs. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket



contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

c. Comprehensive Automobile Liability insurance with minimum limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) per each occurrence, plus an additional amount sufficient to pay related attorneys' fees and defense costs, with respect to each of the Contractor's owned, hired or non owned vehicles assigned to or used in performance of this contract.

d. Builder's Risk insurance with minimum limits of not less than the insurable value of the work to be performed under this contract at completion less the value of the materials and equipment insured under installation floater insurance. The policy shall be written in completed value form and shall protect the Contractor and the Town against risks of damage to buildings, structures, and materials and equipment not otherwise covered under Installation Floater insurance, from the perils of fire and lightning, the perils included in the standard coverage endorsement, and the perils of vandalism and malicious mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear, transformers, panel-boards, control equipment, and other similar equipment shall be insured under Installation Floater insurance when the aggregate value of the equipment exceeds \$10,000. The policy shall provide for losses to be payable to the Contractor and the Town as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Contractor or the Town.

e. ☐ If this box is checked, Professional Liability/Errors and Omission in an amount not less than \_\_\_\_\_ MILLION DOLLARS (\$\_\_\_\_,000,000).

Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. The policies required above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any self-insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Contractor. Contractor shall be solely responsible for paying any and all deductibles.

Each certificate of insurance shall identify this Agreement or the project set forth in the Scope of Work and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate of insurance addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

**10.00 BONDS:** Contractor shall furnish a performance bond, payment bond, and warranty bond in an amount determined by the Town, but in any event at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including but not limited to the guaranty period. These bonds shall remain in effect at least until one year after the date of final payment. All bonds shall be in the forms prescribed by the Contract Documents and be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) 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 Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Town.

**11.00 NO WAIVER OF GOVERNMENTAL IMMUNITY:** The parties hereto understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement or the remainder of the Contract Documents, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the parties, their officers, agents or their employees.

**12.00 INDEMNIFICATION:** The Contractor agrees, to the fullest extent permitted by law, to indemnify, defend and hold the Town, the United States Government, FEMA (if FEMA funding is part of the funding for the Work), the State of Colorado, their agencies, employees, officials and agents ("Indemnitees") harmless from any and all claims, settlements, judgments, damages and costs, including reasonable attorney fees, of every kind and nature made, to include all costs associated with the investigation and defense of any claim, rendered or incurred by or on behalf of the Indemnitees, that may arise, occur, or grow out of any errors, omissions, or negligent acts, done by the Contractor, its employees, subcontractors or any independent consultants working under the direction of either the Contractor or any subcontractor in the performance of this Contract.. The Contractor is not obligated to indemnify the Town for the Town's own negligence.

**13.00 TERMINATION FOR CONVENIENCE:** This Agreement and the performance of the Scope of Work hereunder may be terminated at any time in whole, or from time to time in part, by the Town for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice ("**Notice of Termination**") specifying the extent to which performance of the Scope of Work is terminated and the date upon which termination becomes effective. If the Agreement is terminated, the Contractor shall be paid on a pro-rated basis of work status satisfactorily completed, under the detailed Scope of Work. The portion of the Scope of Work satisfactorily completed but not yet accepted by the Town shall be determined by the Town.

**14.00 EVENTS OF AND TERMINATION FOR DEFAULT:**

- (1) The Town may serve written notice upon the Contractor of its intention to terminate this Agreement in the presence of one of the following events of default:
  - a. Contractor should fail to initiate the Scope of Work at the agreed upon time;
  - b. The performance of the Scope of Work is being unnecessarily or unreasonably delayed;
  - c. The Scope of Work is not completed within the time specified or within the time to which completion of the Scope of Work has been extended;
  - d. Contractor should fail to make prompt payments for labor, materials or to subcontractors;
  - e. Contractor shall willfully violate this Agreement or disregard laws, ordinances or instructions of the Town;
  - f. Contractor shall abandon performance of the Scope of Work;
  - g. The Contract or any part thereof has been assigned, transferred or sublet without Town approval;
  - h. Contractor shall become insolvent or adjudged bankrupt; or
  - i. Contractor shall refuse to remove materials or perform any work within the Scope of Work as shall have been rejected as defective or unsuitable.
- (2) Such written notice shall contain the reasons for the intention to terminate this Agreement and provide a five (5)

business day period during which the Contractor may cure the event of default. A failure to timely cure the event of default shall authorize the Town to immediately terminate this Agreement and take whatever steps it deems necessary to complete the Scope of Work, if so desired by the Town in its sole discretion. The costs and charges incurred by the Town, together with the costs of completion of the Scope of Work shall be deducted from any monies owed to Contractor. If the expense incurred by the Town is greater than the sums payable under this Agreement, the Contractor shall pay the Town, within sixty (60) days of demand therefor the amount of such excess cost suffered by the Town.

**15.00 LIABILITY FOR EMPLOYMENT-RELATED RIGHTS AND COMPENSATION:** The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

The Town will not include the Contractor as an insured under any policy the Town has for itself. The Town shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

To the maximum extent permitted by law, the Contractor waives all claims against the Town for any Employee Benefits; the Contractor will defend the Town from any claim and will indemnify the Town against any liability for any Employee Benefits for the Contractor imposed on the Town; and the Contractor will reimburse the Town for any award, judgment, or fine against the Town based on the position the Contractor was ever the Town's employee, and all attorneys' fees and costs the Town reasonably incurs defending itself against any such liability.

**16.00 GOVERNING LAW AND VENUE:** Venue for any and all legal matters regarding or arising out of the transactions covered herein shall be solely in the District Court in and for Boulder County, State of Colorado. This transaction shall be governed by the laws of the State of Colorado.

**17.00 ASSIGNMENT:** The Contractor shall not assign any of his rights or obligations under this Agreement without the prior written consent of the Town. Upon any assignment, even though consented to by the Owner, the Contractor shall remain liable for the performance of the work under this agreement.

**18.00 LAWFUL PERFORMANCE:** It is further agreed that no party to this Agreement will perform contrary to any state, federal, or county law, or any of the ordinances of the Town of Lyons, Colorado.

**19.00 INVALID SECTIONS:** Should any section of this Agreement be found to be invalid, it is agreed that all other sections shall remain in full force and effect as though severable from the invalid part.

**20.00 NOTICE:** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile or email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

The Town:	Town of Lyons Attention: Town Administrator 432 5 <sup>th</sup> Avenue P O Box 49 Lyons, CO 80540
With copies to:	Attn: Town of Lyons Town Attorney Kissinger & Fellman, P.C. Ptarmigan Place, Suite 900 3773 Cherry Creek North Drive Denver, CO 80209
Contractor:	Asphalt Specialties Company, Inc. 10100 Dallas Street Henderson, CO 80640

With a copy to:

***SIGNATURE PAGE FOLLOWS***

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF LYONS

ATTEST:

☒ Board of Trustees approval required per § 4-3-40 of the Municipal Code

By: \_\_\_\_\_  
Dolores M. Vasquez, CMC, Town Clerk

By: \_\_\_\_\_  
Connie Sullivan, Mayor

OR

☐ Town Administrator approval required per § 4-3-40 of the Municipal Code

By: \_\_\_\_\_  
Victoria Simonsen, Town Administrator

Mutual Execution Date: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_  
Asphalt Specialties Company, Inc.  
Daniel W. Hunt - President

STATE OF **Colorado** )

COUNTY OF **Adams** ) ss.

The foregoing Construction Agreement was acknowledged before me this **31st** day of **March**,

20**20**, by **Daniel W. Hunt** as

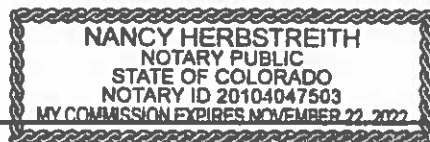
**President** of **Asphalt Specialties Company, Inc.**

**Colorado Corporation**.



Witness my hand and official seal.

My commission expires: **11/22/2022**



\_\_\_\_\_  
Notary Public **Nancy Herbstreith**  
(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))

THIS AGREEMENT is executed and made effective as provided above.



TOWN OF LYONS

☒ Board of Trustees approval required per § 4-3-40 of the Municipal Code

By: Connie Sullivan  
Connie Sullivan (Apr 9, 2020)  
Connie Sullivan, Mayor

OR

☐ Town Administrator approval required per § 4-3-40 of the Municipal Code

By: \_\_\_\_\_  
Victoria Simonsen, Town Administrator

Mutual Execution Date: \_\_\_\_\_

CONTRACTOR

By: [Signature]  
Asphalt Specialties Company, Inc.  
Daniel W. Hunt - President

STATE OF **Colorado** )

COUNTY OF **Adams** ) ss.

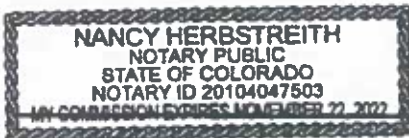
The foregoing Construction Agreement was acknowledged before me this **31st** day of **March**,

20**20**, by **Daniel W. Hunt**  
**President** of **Asphalt Specialties Company, Inc.**  
**Colorado Corporation**.



Witness my hand and official seal.

My commission expires: **11/22/2022**



[Signature]  
Notary Public **Nancy Herbstreith**  
(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))






# 2020-53 20-RDWY-01 asphalt specialities

Final Audit Report

2020-04-09

Created:	2020-04-08
By:	Town of Lyons (recreation@townoflyons.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXvKz2nzilr2Es2pG0pPN0K-uu4tc70M_

## "2020-53 20-RDWY-01 asphalt specialities" History

-  Document created by Town of Lyons (recreation@townoflyons.com)  
2020-04-08 - 9:50:13 PM GMT- IP address: 65.101.227.171
-  Document emailed to Connie Sullivan (csullivan@townoflyons.com) for signature  
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-  Email viewed by Connie Sullivan (csullivan@townoflyons.com)  
2020-04-09 - 12:34:41 PM GMT- IP address: 65.113.156.32
-  Document e-signed by Connie Sullivan (csullivan@townoflyons.com)  
Signature Date: 2020-04-09 - 12:38:07 PM GMT - Time Source: server- IP address: 65.113.156.32
-  Signed document emailed to Town of Lyons (recreation@townoflyons.com) and Connie Sullivan (csullivan@townoflyons.com)  
2020-04-09 - 12:38:07 PM GMT



Adobe Sign

**Asphalt Specialties Company, Inc.**

Roadway Repairs - Flood Recovery/20-RDWY-01

Project Name and Number

A. The positions listed under Part B that have been filled by Asphalt Specialties Company, Inc.

B. Employment positions filled since \_\_\_\_\_

[illegible][illegible]

C. No employment positions have been filled since \_\_\_\_\_

**Daniel W. Hunt - President**

RML

03/30/2020

45



### SECTION 3 CERTIFICATION FOR BUSINESS

NOTICE: Due by Contractor **PRIOR TO** Contract Execution (over \$100,000)

Project Name: Roadway Repairs - Flood Recovery Contract Number: \_\_\_\_\_

Contractor Name: Asphalt Specialties Company, Inc.

It is the policy of the Congress and the purpose of the federal Section 3 policy to ensure that the employment and other economic opportunities generated by federal financial assistance for housing, economic and community development programs shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are the recipients of government assistance for housing.

Does your business qualify as a Section 3 business? ☐ Yes ☒ No

To qualify as a Section 3 business, you must meet one or more of the following three criteria (please check all that apply as per 24 CFR, Subchapter B, Part 135.5):

- ☐ Is owned (51% or more) by Section 3 residents (defined below \*)
- ☐ Employs in permanent, full-time positions, at least 30% persons whom are currently Section 3 residents OR whom were Section 3 residents within three years of the date of first employment with the business
- ☐ Provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to businesses that meet one of the above definitions.

\* Section 3 residents are persons who either live in public housing or are at or below the following income qualifications:  
[https://www.hudexchange.info/resource/reportmanagement/published/HOME\\_IncomeLmts\\_State\\_CO\\_2015.pdf](https://www.hudexchange.info/resource/reportmanagement/published/HOME_IncomeLmts_State_CO_2015.pdf)

COUNTY	Type of Household	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
BOULDER	Low Income	\$46,100	\$52,650	\$59,250	\$65,800	\$71,100	\$76,350	\$81,600	\$86,900

I certify that the above information is accurate, and agree to provide records upon request for verification of my eligibility as a Section 3 business.

  
\_\_\_\_\_  
Signature

Daniel W. Hunt

Name (printed)

President  
\_\_\_\_\_  
Title

03/30/2020

Date

[illegible]

## GENERAL CONTRACT CONDITIONS

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1. **DEFINITIONS:** The Contract Documents shall include; the Advertisement for Bids, Instructions to Bidders, Proposal, Bid Bond, Labor & Material Bond, Performance Bond, Construction Agreement, General Contract Conditions, Supplementary Conditions, Drawings and Specifications including all Addenda issued prior to the opening of bids, approved Change Orders, Contractor's Application for Payment and Engineers Certificate of Payment.

The following definitions and terms shall be applicable to all the Contract Documents:

- A. The words "**Contract**" or "**Contract Documents**" shall be held to include all the items in the foregoing list.
- B. "**Owner**" shall mean **Town of Lyons**, Boulder County, Colorado, acting through its duly authorized representative.
- C. "**Contractor**" shall mean each person, firm or corporation entering into a contract directly with the Owner.
- D. "**Subcontractor**" shall include those having a direct contract with the Contractor, or another subcontractor, for performing work and/or furnishing labor or materials, and those furnishing material worked to a special design according to the plans and specifications for the work, but shall not include anyone who merely furnishes material not so worked.
- E. "**Engineer**" or "**Consultant**" shall mean the Engineer or Consultant designated, appointed, or otherwise employed by the Owner, acting within the scope of the particular duties entrusted to them by the Owner in each case.
- F. "**Notice to Contractor**" shall be deemed to have been duly served when delivered in writing and in person to the individual or to a member of the firm or to an officer of the corporation for which it is intended, or when received in writing at the business address of such individual, partner or officer last known to the person giving the notice.
- G. The "**Work**" shall mean the equipment, supplies, materials, labor and services to be furnished under the Contract and the carrying out of all obligations imposed or required by the Contract Documents.
- H. The "**Date of Completion**" of the work is the date when construction is certified by the Engineer or Consultant and the Owner to be finally completed in accordance with the Contract Documents, as modified by any Change Orders agreed to by the parties

## General Conditions (continued)

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and when the Owner has fully accepted the project for the use for which it was intended. Such date will be set forth in a Letter of Acceptance issued by the Owner.

2. **REFERENCE STANDARDS:** Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative standard adopted and published at the date of the Contract Documents unless specifically stated otherwise.

3. **DRAWINGS AND SPECIFICATIONS:**

A. Drawings and Specifications Available on Site. The Contractor shall maintain at the site for the Owner and Consultant one copy of the drawings and specifications, addenda, approved shop drawings, Change Orders, and other modifications, in good order and marked in a contrasting color to show all changes made during construction. The Contractor shall at all times give the Owner or its representatives access thereto.

B. Project Record Drawings and Specifications. Unless more detailed requirements are called out in the contract documents, the Contractor shall maintain a Contract set of drawings at the site with all changes or deviations from the original drawings neatly marked thereon in a contrasting color. The Contractor shall also maintain a Contract set of specifications at the site, noting therein by appropriate section, the names, models and other distinguishing characteristics of the product actually incorporated into the work. This set of drawings and specifications shall be updated daily as the job progresses and shall be made available to the Owner and Engineer for inspection at all times. Upon completion of the work and before final payment, this Project Record set of drawings and specifications shall be delivered to the Engineer.

C. Contractor to Check Drawings and Schedules. The Contractor shall check all dimensions, elevations, grades and quantities shown on the drawings and furnished to him by the Engineer, and shall notify the Engineer of any discrepancy between the drawings and the conditions on the ground, or any error or omission in drawings, or in the layout as given by stakes, points, or instructions, which he may discover. Before ordering any material or doing any work, the Contractor shall verify all measurements at the building and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on the drawings. Any difference which may be found shall be submitted to the Engineer for consideration before proceeding with the work. The Contractor will not be allowed to take advantage of any error or omission in the drawings or Contract Documents. Full instructions will be furnished by the Engineer should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

4. **ROYALTIES AND PATENTS:** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall hold the Owner harmless from loss on account thereof. If the Contractor has information that the

## General Conditions (continued)

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process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer.

5. **ITEMS COVERED BY CONTRACT PRICE:** Unless otherwise specifically provided herein, the Contractor shall accept the compensation stated in the Contract as full payment for furnishing all bonds, insurance, materials, transportation, apparatus, temporary structures, equipment, services, fuel, energy, light, water, labor, and tools, and all other things necessary for the complete and proper execution of the Work contemplated by or reasonably implied from the Contract Documents, within the time limits indicated therein. Such amount shall include any loss or damage arising from the nature of the Work, from the action of the elements or from any unforeseen difficulties which may be encountered; all risks of every description connected with the prosecution of the Work; all expenses incurred in consequence of any suspension or discontinuance of the Work; and all other amounts necessary for completing the Work pursuant to the Contract Documents, within the time limits indicated therein.
6. **EXECUTION, CORRELATION, INTENT, AND INTERPRETATION OF CONTRACT DOCUMENTS:**
  - A. Execution. The Contract Documents shall be signed in multiple copies as directed by the Owner. Within ten (10) days after Notice of Contract Award, the Contractor shall return to the Owner a minimum of four (4) fully executed original sets of the Construction Agreement; Performance Bond and Labor and Material Payment Bond with original Power of Attorney; and certificates of required insurance coverages. The date of the contract for purposes of these documents shall be the date of the Notice of Contract Award letter. The Owner will execute the Construction Agreement, assemble all copies, and distribute the Contract Documents. The Contractor shall not commence the Work until he receives the Notice to Proceed.
  - B. Correlation. By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
  - C. Intent. The intention of the Contract Documents is to include all labor and materials, tools, equipment, construction equipment, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

The organization of the specifications into divisions, sections, and articles, as the case may be, and the arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of work to be performed by any trade.

## General Conditions (continued)

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It is intended that even though work is not covered under any heading, division, section, article, branch, class, or trade of the specifications, it shall nevertheless be supplied if it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results.

The specifications and drawings are intended to supplement but not necessarily duplicate each other. Any work exhibited in the one and not in the other shall be executed as if it had been set forth in both, so that the Work will be constructed according to the complete design as determined by the Engineer.

- D. Interpretation. Should anything necessary for a clear understanding of the Work be omitted from the specifications and drawings, or should the requirements appear to be in conflict, the Contractor shall secure written interpretations or instructions from the Engineer before proceeding with the Work affected thereby. It is understood and agreed that the Work shall be performed according to the true intent of the Contract Documents.

Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence of the Construction Documents is in the following sequence:

- 1) Addenda to the drawings and specifications take precedence over the original Construction Documents.
- 2) Should a conflict arise between the drawings and specifications, the specifications shall have precedence over the drawings.
- 3) In the drawings, the precedence shall be drawings of larger scale over those of smaller scale and noted materials over graphic indications.
- 4) Any work mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as if shown or mentioned in both. The Contractor shall examine the specifications and drawings and check all dimensions and notify the Engineer and the Owner of any discrepancies between the specifications and drawings and any deficiencies, omissions, or errors before any work is commenced.

## 7. MATERIALS, LABOR, FACILITIES, AND STORAGE:

- A. Contractor's Responsibility: Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, tools, equipment, machinery, transportation, and other facilities necessary for the proper execution and completion of the Work. The Contractor shall provide and pay for all the temporary facilities required to supply all the power, light, water, and heat needed by him and the subcontractors for their work and shall install and maintain all such facilities in such manner as to

## General Conditions (continued)

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protect the public and workers and conform with any applicable laws and regulations. If temporary heat and/or protection is required for the expeditious prosecution of the Work and before the permanent heating apparatus is available for use, the temporary heating apparatus shall be installed and operated in such a manner that the finish work and/or construction will not be damaged thereby.

- B. Materials: Unless otherwise specified, all materials shall be new and free of asbestos, and both workmanship and materials shall be of the highest quality. The Contractor shall furnish satisfactory evidence as to the kind and quality of materials. The Contractor shall certify or provide evidence to the Owner that all materials used are asbestos-free. Samples shall be furnished, when specified, and the Work shall be in accordance with those samples which have been approved.
- C. Facilities and Storage: The Contractor shall provide and maintain, in a neat and sanitary condition, adequate temporary toilet facilities for the use of any and all employees engaged on the Work, in strict compliance with the requirements of all applicable codes, regulations, laws, and ordinances. In no event may present toilet facilities of any existing building at the site of the Work be used by employees of the Contractor or subcontractors. Upon completion of the Work, the Contractor shall remove all such temporary facilities from the site and disinfect the premises.

The Contractor shall provide suitable temporary facilities for workers and shall maintain on premises water-tight storage shed or sheds, tool houses for storage of building materials and tools which may be damaged by weather. The Contractor shall allow space for the erection of sheds and provide similar facilities for storage by subcontractors of their materials and tools. These facilities shall further provide for protection against theft and damage of building materials and tools. Upon completion of the Work, the Contractor shall remove all such temporary facilities from the site.

The Contractor shall provide adequate, weatherproofed, heated, and well-lighted office space at the site of the Work. The Contractor shall also provide telephone service at such office, which shall be available for the use of the Engineer, the Owner and their representatives without charge, except for toll calls.

All of the foregoing facilities shall be of a quality and placed in locations acceptable to the Engineer and the Owner.

8. **PERFORMANCE AND PAYMENT BONDS**: The successful bidder shall within ten (10) days execute, deliver to and file with the Owner, a good and sufficient bond to be approved by the Owner in a penal sum equal to the Contract price. Such bond shall be duly executed by a qualified corporate surety, conditioned upon the true and faithful performance of the Contract, and warranty work, and, in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, or other supplies used or consumed by such Contractor or his subcontractor in performance of the Work contracted to



## **General Conditions (continued)**

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be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest as provided by law. Performance and payment bonds shall be on forms provided by the Owner and must be issued by qualified sureties as specified herein. The Performance Bond shall additionally guarantee that the Contractor shall remedy any omissions; correct any and all defects; and adjust and make operable all component parts of the Work falling under the requirements of his Contract which may be called to his attention within a period of twenty-four (24) months following the Date of Completion established in the Letter of Acceptance.

The expense of this bond shall be borne by the Contractor. If, at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so.

- 9. OBTAINING PERMITS, AND COMPLIANCE WITH LAWS AND REGULATIONS:** The Contractor and all subcontractors shall comply with all applicable Federal and State statutes and with rules, regulations and orders of any governmental body having jurisdiction over the Work to be performed, including the Colorado Department of Labor and the Colorado Department of Health. Contractor and subcontractors shall further comply with ordinances, laws and regulations of the Town of Lyons, Colorado.

Permits, governmental fees and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. The Owner is generally exempt from paying any fee for any building permit issued by any building departments and the Contractor shall see that no permit fee is paid. However, the Contractor shall secure such building permit from the proper governmental agency if requested by the Owner, in which case the cost of any such fee shall be verified and paid by the Owner.

The Contractor shall call for all inspections on a timely basis by the State of Colorado, Department of Labor, Safety Inspection Branch, and any other agency having jurisdiction over the Work.

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work as drawn and specified. Should any of the provisions of the Contract Documents be in conflict therewith, then that portion which is in conflict shall be considered stricken and the applicable statute, ordinance, regulation or ruling substituted therefor. If the Contractor observes such a conflict, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Owner, he shall bear all costs arising therefrom and to correct same.

- 10. SURVEYS, BENCHMARKS, MONUMENTS AND STAKES:**



## General Conditions (continued)

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- A. Surveys. As provided by the Owner, the Contractor shall obtain from the Engineer, a copy of all surveys describing property lines, elevation benchmarks, physical characteristics, and utility locations.
- B. Benchmarks. The Contractor shall properly stake out the work and provide and rigidly set benchmarks and batter boards as necessary for the proper performance of the Work. The Contractor shall remain responsible for their maintenance and their accuracy. A permanent benchmark, approved as to location and type by the Engineer, from which all grades are to be taken, shall be established near the site of the work by the Contractor. From this benchmark the Contractor shall ascertain all grades and levels to the building as needed. The Contract Documents will include all necessary information to establish the benchmark.
- C. Preservation of Monuments and Stakes. The Contractor shall carefully preserve all monuments, benchmarks, property markers, reference points, and stakes. In case of his destruction thereof, the Contractor will be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks which must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or benchmarks.

### 11. DIFFERING SITE CONDITIONS:

- A. Notice: The Contractor shall promptly, and before such conditions are disturbed, notify the Owner and Engineer in writing of:
  - 1) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents.
  - 2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The Owner and Engineer shall promptly investigate the conditions and if the Owner finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified by Change Order.
- B. Claims: No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required above. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

12. **PROTECTION OF WORK, PERSONS AND PROPERTY:** The Contractor shall maintain adequate protection of all his work, materials and equipment that are to be incorporated in the project; whether stored on or off the site, under the care, custody or control of the Contractor or his subcontractors. The Contractor shall also maintain adequate protection of other property at the site or adjacent thereto, including landscaping, irrigation, pavements, structures and utilities not designated for removal, relocation or replacement in the course of construction, as provided bylaw and the Contract Documents.

The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of Federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. He shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he shall designate a responsible member of his organization on the Work, whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner and Engineer.

The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of the Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. The Contractor shall not permit open fires within the building enclosure. The Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water.

During the course of construction, the Contractor shall maintain free and unimpeded all required exits from the building. Barricades shall be so erected that traffic is separated and protected from the construction. Such exits shall not be closed at any time for any reason while the building is occupied nor at any time when the building is unoccupied except after written approval is given by the Owner and proper warning and directional signs are posted.

The Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary to assure the safe passage of pedestrians and automobiles.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; and he shall so act, without appeal, if so authorized or instructed. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement for extra

## General Conditions (continued)

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compensation. Notification of and report of such emergencies shall be made immediately to the Owner and Engineer.

When the whole or a portion of the Work is suspended for any reason, each Contractor shall properly cover over, secure and protect such of his work as may be liable to sustain injury from any cause.

- 13. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION:** The Contractor shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Engineer and Owner. The superintendent shall not be changed except with the consent of the Engineer and Owner, unless, the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Directions shall be confirmed in writing by the Contractor.

The Contractor shall give efficient supervision to the Work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Engineer and the Owner any error, inconsistency or omission which he may discover, but he shall not be liable to the Owner for any damage directly resulting from and to the extent proximately caused by any errors or deficiencies in the Contract Documents or other instructions by the Engineer.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Work. He shall lay out the Work in a manner satisfactory to the Engineer, making permanent records of all lines and levels required for excavation grading and foundations, and for all other parts of the Work.

- 14. SUBSTITUTIONS:** The Contractor will be held to have used in his base proposal and to furnish under the Contract those items of equipment and/or materials which are specifically identified in the specifications by a manufacturer's name, model, or catalog number, or which have been specifically approved in writing by the Engineer during the bidding period, in accordance with procedures established by the Engineer, and which have been listed in an Addendum prior to the bidding.

At the time of bidding, items of equipment of the Contractor's choice may be offered as alternates to the items named in the specifications by submitting with the proposal and on the form provided, identifying data on the articles proposed, together with a statement of the amount of addition or deduction from the base bid if the bidder's alternate is accepted. Prior approval by the Engineer is not required on items submitted as alternate bids.

After execution of the Contract, substitution of equipment and/or materials of makes other than those specifically named in the Contract Documents may be approved only for the following reasons:

## **General Conditions (continued)**

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- A. That the equipment or material proposed for substitution is, in the opinion of the Owner, equal to and/or superior to equipment and/or materials named in the specifications so far as performance, construction, efficiency and utility are concerned; and
- B. That the materials and/or equipment named in the specifications are no longer available or cannot be delivered to the job in time to complete the work in proper sequence due to conditions beyond the control of the Contractor; or
- C. That the equipment and/or materials proposed for substitution is of satisfactory quality, construction, efficiency and utility, and there is a substantial difference in price and/or delivery. To receive consideration under this subparagraph, such a request must be supported by documentary proof of quality and difference in price and/or delivery, if any, for both the specified and the proposed substitute material and/or equipment.

All requests for substitution must be submitted in writing with supporting documentation by or through the Contractor to the Engineer for initial review, before being submitted to the Owner for evaluation and final approval. In the absence of the Owner's written approval, no substitution of materials or methods will be allowed for any items specified in the Contract Documents.

In case of a difference in price occurring as a result of an approved substitution, the Owner shall receive all benefit of the difference in cost involved in the substitution. All substitutions will be approved by issuance of a formal Change Order as provided in these General Contract Conditions.

### **15. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES:**

- A. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.
- B. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- C. Samples are physical examples which illustrate materials, finishes, equipment or workmanship and establish standards by which the Work will be judged.

Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

## General Conditions (continued)

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The Contractor shall review, approve, stamp and then submit to the Engineer: Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

The number of copies and format of submittals shall be as required by the Engineer, but shall include (1) copy of the original Shop Drawings and Product Data for the Owner.

The Engineer will, with reasonable promptness so as to cause no delay, check Shop Drawings, Product Data and Samples to determine whether specifications and drawings have been properly interpreted and design requirements fulfilled. All corrections or requests for re-submittal by the Engineer shall be clearly noted on the submittals and returned to the Contractor. The Contractor shall make any corrections required by the Engineer and shall re-submit the required number of corrected copies of submittals until approved.

The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals.

The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer. Such Work shall be in accordance with approved submittals.

When Shop Drawings, Product Data, Samples or similar submittals have been approved and stamped by both Contractor and Engineer a copy of each shall be immediately forwarded to the Owner.

16. **CASH ALLOWANCE:** The Contractor shall include in the Contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such Contractors and for such sums as the Owner may direct, the contract sum being adjusted in conformity therewith. The Contractor declares that the contract sum includes such sums for

## General Conditions (continued)

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expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has filed a lien or has a reasonable objection due to previous legal claims.

### 17. CHANGES:

A. Change Orders: The Owner may, at any time, by a written Change Order directed through the Engineer, without notice to the sureties and without invalidating the Contract, make changes in the drawings and/or specifications of the Contract and within the general scope thereof; order extra work; or make changes by altering, adding to, or deducting from the Work. If such changes cause an increase or decrease in the amount due under the Contract, or in the time required for its performance, an equitable adjustment shall be made on the Change Order and the Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within ten (10) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Owner, if it determines that the facts justify such action, may receive and consider, and adjust any such claim asserted at any time prior to the date of final settlement of the Contract. No Change Order or other form of order or directive by the Owner or Engineer requiring additional compensable work to be performed, which causes the aggregate amount payable under the Contract Documents to exceed the amount appropriated for the original Construction Agreement, shall be issued unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made.

B. Price Differential: The change in Contract price resulting from a change in the Work shall be determined in one of the following ways:

- 1) By estimate and acceptance in a lump sum, with a maximum total combined mark-up to the Owner, for the Contractor and all affected subcontractors not to exceed fifteen percent (15%).
- 2) By unit prices named in the Contract or subsequently agreed upon.
- 3) If the parties are unable to agree on one of the above methods, then the amount shall be determined by force account under the following formula:
  - a) The actual cost of all direct labor performed (including foremen employed continuously on the Work, but not the salary, or any part thereof, of the Contractor's superintendent) and the actual materials furnished for and used in such work, less all available cash, trade, or other discounts;



## General Conditions (continued)

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- b) Rental for the use of such items of equipment as have an individual value in excess of One Thousand Dollars (\$1,000.00); provided that the amount of such rental charge and the length of time and probable cost of the use of such equipment shall have been authorized in writing by the Owner;
  - c) All proportionate sums paid for royalties, permits, and inspection fees;
  - d) All proportionate premiums for public liability insurance, worker's compensation, and other proper and necessary insurance, as well as all applicable payroll taxes;
  - e) Either a predetermined lump sum, fixed fee, or a fee of fifteen percent (15%), which fee shall be applied to the total of paragraphs a), b), and c) only, and shall constitute full compensation to the Contractor for all costs and expenses, including all overhead and profit, which are not otherwise enumerated above. Subcontractors, if employed by the Contractor on this part of the work, will receive such portion of the Contractor's fee as may be agreed and paid to them by the Contractor.
  - f) The Contractor shall keep and present, in such manner as the Owner may direct, an accurate accounting of all the foregoing costs, together with all supporting vouchers and other documentation, all subject to audit by the Owner.
- C. Minor Changes: In giving instructions, the Engineer shall have authority to make minor changes in the Work, which do not involve extra cost or extend the Contract completion date, and which are not inconsistent with the purposes of the building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Engineer, or a written order from the Engineer stating that the Owner has authorized the extra work or change. No claim for an addition to the Contract sum shall be valid unless ordered or authorized in the manner set forth in this paragraph.
18. **CLAIMS FOR EXTRA COST:** If the Contractor claims that any instructions by drawings or otherwise, after the execution of the Contract, involve extra cost under the Contract which were not included in the original bid, he shall give the Owner and the Engineer written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute the work, except in an emergency endangering life or property, and the procedure shall then be as provided for changes in the Work. No such claim shall be valid unless so made. Any change in the Contract amount must be authorized by Change Order.

## General Conditions (continued)

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19. **DELAYS AND EXTENSION OF TIME:** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or of any employee of the Owner, or by any separate Contractor employed by the Owner, or by changes ordered in the Work, or by strikes, lockout, fire, unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's control, or by any cause which the Owner determines may justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may determine.

Extension of the contract completion time for delays due to weather will be considered only when such conditions are more severe and extended than those reflected by the ten-year average for the month as evidenced by Climatological data, U.S. Department of Commerce, for the Boulder area or specific building area, and only if a request for such extension of time is received by the owner within seven (7) days of the first day of each delay. Extensions of time due to weather or other allowable reasons will be granted on the basis of 1.4 calendar days credit for each working day lost, with each extension figured to the nearest whole calendar day. No more than thirty (30) calendar days' extension for weather will be allowed during the total construction period.

All requests for extensions of time shall be subject to the Owner's approval, and shall be made in writing to the Owner no more than seven (7) calendar days after the occurrence of the delay. If not so submitted, they shall not be allowed.

The Owner reserves the right to occupy any part of the structure on the original schedule, after suitable inspection of conditions, without waiving Owner's rights with respect to liquidated damages as provided in the Contract.

20. **INSPECTION OF WORK:** The Owner and Owner's representative shall at all times have access to the Work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's or Owner's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Owner timely notice of its readiness for inspection, and if the inspection is by another authority than the Owner, of the date fixed for such inspection.

Inspections by the Owner and the Engineer shall be promptly made. If any work should be covered up without approval or consent of the Owner and the Engineer, it must, if required by the Owner, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Owner, and if so ordered must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs, unless he shall show that the defect in the Work was caused by another Contractor engaged by the owner. In that event the Owner shall pay such cost, with the right to reimbursement from such other Contractor.



**21. CORRECTION OF WORK:**

- A. Correction of Work Before or After Completion: The Engineer or Owner has the authority to condemn work which is defective or does not conform to the Contract Documents. The Contractor, following written demand, shall promptly correct all work rejected by the Engineer or Owner as defective or as failing to conform to the Contract Documents whether observed before or within two (2) years after final completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost of the Engineer's and/or Consultant's additional services thereby made necessary. If the Contractor proceeds to build in or cover the item which has been rejected, he shall be totally responsible for the cost of removal and replacement of said item and removal and replacement of all necessary work surrounding or covering the item in order to produce a first class job. The obligation of the Contractor to correct the Work shall be in addition to, and not in limitation of, any other obligations imposed by law, the Contract Documents, or other rights of the Owner.
- B. Tests to Determine Conformance: Whenever in the opinion of the Engineer/Consultant the Owner, tests are essential to assure the professional evaluation of the Work which is subject to being rejected or condemned, the necessary number of tests will be performed by a consultant designated by the Owner. The recommendation of this consultant is final and all parties to the Contract will comply with the methods and extent of the corrections submitted in writing to the Owner and the Engineer by the designated consultant. The cost of the tests will become the Contractor's responsibility when corrections of any nature are recommended by the consultant to the investigated work; otherwise, the Owner will pay for all tests performed.
- C. Removal of Condemned Work: The Contractor shall promptly remove from the premises all work condemned by the Engineer or Owner as failing to conform to the Contract Documents, whether incorporated or not, and the Contractor shall promptly replace and re-execute such work in accordance with the Contract and without expense to the Owner, and shall bear the expense of making good all work of other subcontractors found to be defective or destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work within a reasonable time, fixed by written notice from the Owner, the Owner may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within (10) ten days' time thereafter, the Owner may, upon ten (10) days' written notice, sell such materials at auction or at private sale accounting for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor, including compensation for additional Engineer services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due

## General Conditions (continued)

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the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

- D. Correction of Work After Final Payment: Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom which shall appear within a period of two (2) years from the Date of Completion. The Owner shall give notice of observed defects with reasonable promptness. Such notice shall be in writing to the Engineer and Contractor. All questions arising under this article shall be decided by the Owner or its authorized representative. This warranty shall be in addition to and not in lieu of all other remedies available to the Owner.

### 22. OWNER'S RIGHT TO CORRECT WORK:

- A. Corrections By Owner: If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of this Contract, including, without limitation, the correction of punch list or warranty items, the Owner, after three (3) days' written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the reasonable cost thereof from any payment then or thereafter due the Contractor, and recover any deficiency from the Contractor. In the event work is performed by the Owner, the Owner's employees, or by persons other than the Contractor at the request of the Owner, as provided above or in order to comply with existing statutes, codes or regulations of any governmental authority or to protect the health and/or welfare of persons occupying or intending to occupy the Owner's building, the Owner shall not be liable to the Contractor for inconvenience, expense or subsequent cost of removal of such work.

- B. Deductions for Uncorrected Work: If the Owner deems it inexpedient to correct work that has been damaged, is defective, or has not been completed in accordance with the Contract Documents, an equitable deduction from the Contract price shall be made by Change Order therefor. The amount to be deducted as cost of doing work shall include the cost of the Engineer's/ Consultant's additional services made necessary by such default. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

### 23. OWNER'S RIGHT TO TERMINATE CONTRACT:

- A. For Cause: If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefits of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if he should fail to make prompt payment to

## General Conditions (continued)

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subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, or otherwise breach any material provision of the Contract, then the Owner, when in its opinion sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor and the surety seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the Work by whatever method it may deem best. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the Work including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his surety shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be determined by the Owner.

- 1) The Owner may take control of the Work and either make good the deficiencies of the Contractor or direct the activities of the Contractor in doing so, employing such additional help as the Owner deems advisable. In such event the Owner shall be entitled to collect from the Contractor and his surety, or to deduct from any payment then or thereafter due the Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of the Contractor.
- 2) The Owner may require the surety on the Contractor's bond to take control of the Work at once and see to it that all the deficiencies of the Contract are made good, with due diligence. As between the Owner and the surety, the cost of making good such deficiencies shall all be borne by the surety. If the surety takes over the Work, either upon termination of the services of the Contractor or upon instructions from the Owner to do so, the provisions of the Contract Documents shall govern in respect to the work done by the surety, the surety being substituted for the Contractor as to such provisions, including provisions as to payment for the Work and provisions of this article as to the right of the Owner to do the Work or to take control of the Work.

- B. Without Cause: Should conditions arise which in the Owner's opinion make it necessary or advisable to discontinue work under the Contract Documents, the Owner may terminate the Contract in whole or in part without cause or fault by the Contractor by giving seven (7) calendar days' written notice to the Contractor. The notice shall specify the date and extent to which the Contract is terminated. Upon any such termination, the Owner shall take possession of the site and all or any part of the materials and equipment delivered or en route to the site. In the event of termination under this paragraph 24(B) the Contractor shall be equitably paid for all work properly completed, based upon the approved Schedules of Values.

24. **CONSTRUCTION SCHEDULE AND PROGRESS REPORTS:** The Contractor shall submit, within seven (7) calendar days after the date of the Notice to Proceed in a format acceptable to the Owner, a construction schedule for the project. This schedule shall start with the date of the Notice to Proceed, and the completion date shall be a date which will enable the Owner to accept the work on the date specified in the Construction Agreement. The Schedule shall fully indicate a timetable representing the various elements of the work and their logical relationships and shall provide for the expeditious and practicable execution of the Work. The time shown between the starting and completion dates of the various elements within the schedule shall represent one hundred percent (100%) completion of each element in the Schedule of Values. The CPM schedule shall include all activities necessary, including submittals, approval periods and Owner activities. No working activities shall be shown with durations exceeding fifteen (15) working days. If an activity is longer than this, it shall be segmented. The schedule shall identify for each activity the trades responsible and the manpower necessary to complete the activity as scheduled.

The Schedule shall be revised by the Contractor during the progress of the Work. When the actual progress in the opinion of the Engineer or Owner, varies materially from that previously approved, additional detailed schedules of separate elements of the work may be requested at the Owner's discretion.

The Contractor shall submit monthly Progress Reports and an updated schedule with the Application for Payment. These reports shall reflect the Contractor's "work in place" progress and will be certified by the Contractor or his superintendent as to the date and contents of such "work in place" progress report. Such reports shall depict progress and percentage of completion, consistent with the values and amounts contained on the counterpart Request for Payment. The subcontractors shall be supplied copies of the Contractor's approved schedule. These subcontractors shall develop a similar schedule based on their respective work. Failure to submit an approved schedule or monthly progress report shall be deemed cause to reject Applications for Payment.

The Contractor shall schedule all work so as to reduce to a minimum any disruption in the use of the existing facilities and interruptions of utility service of any type. All remodeling work or disruption of utilities to an occupied building shall be scheduled and submitted to the Owner and Engineer for approval.

25. **SCHEDULE OF VALUES:** Before beginning work and prior to the first Application for Payment, the Contractor shall submit to the Owner a complete, itemized Schedule of the Values of the various parts of the work in format and level of detail as acceptable to the Owner, aggregating the total sum of the Contract, separating material costs from other costs, including as material costs the material costs of all subcontractors under such Contractor, supported by such evidence as to its correctness as the Owner may direct. This schedule will be used for the Application for Payment provided for in these General Contract Conditions.
26. **PAYMENTS TO CONTRACTORS:** Partial payments will be made as the Work progresses within thirty (30) days after receipt of an acceptable invoice and billing backup,, or at other monthly dates established by the Owner, upon properly prepared Contractor's Application

## General Conditions (continued)

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and Certificate for Payment forms submitted to and approved by the Engineer and the Owner. The Owner reserves the right to withhold payments at any time, regardless of the Engineer's recommendations. The Applications for Payment shall be based on the same items as are shown in the Schedule of Values indicating the material used and work performed for which payment is claimed. In preparing Applications, material delivered and properly stored on the site and preparatory work done may be taken into consideration.

Payments will be made in the full value of the work performed and material stored less five percent (5%) of such value which shall be retained until the Date of Completion of all Work, unless otherwise agreed by Owner, and less the aggregate of any previous payments. On satisfactory completion and final acceptance of each separate building or portion of the building or other division of the Contract upon which agreement has been reached as to its separate price, at the discretion of the Owner, payment may be made in full, including retained percentages thereon less deductions as determined by the Owner. Any withdrawal of retainage based upon a deposit of acceptable securities shall be on the Owner's approved forms and shall require that the acceptable securities be endorsed in favor of the Owner, authorizing the Owner to negotiate the acceptable securities and to receive the payments due. Payments by the Contractor to his subcontractors shall be made in the same manner as provided herein between the Owner and the Contractor.

The Contractor warrants that title to and ownership of all material and work covered by partial payments which have been made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on his observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his 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 whole upon final completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is, in the Engineer's opinion, entitled to payment in the amount certified.

After the Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner provided herein. No Certificate for a progress or final payment, nor any partial or entire use or occupancy of the project by the Owner shall constitute an acceptance of any work not completed in accordance with the Contract Documents.

## General Conditions (continued)

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27. **PAYMENTS WITHHELD:** The Owner may withhold payment or the Engineer/Consultant may decline to issue a Certificate for Payment in whole or in part, or the Engineer or Owner may withhold or nullify the whole or any part of any Certificate previously issued, because of subsequently discovered evidence or subsequent inspections, for such an amount or to such extent as may be necessary in the opinion of either to protect the Owner from loss on account of:
- A. Defective work not remedied.
  - B. Claims filed or reasonable evidence indicating probable filing of claims.
  - C. Failure of the Contractor to make payments properly and promptly to subcontractors or for material or labor.
  - D. A reasonable doubt that the Contract can be completed for the balance then unpaid.
  - E. Damage to another contractor.
  - F. Failure of the Contractor to prosecute any portion of the Work in compliance with the approved schedule.
  - G. Failure of the Contractor to submit on a timely basis any documentation required by the Contract Documents, including, without limitation, monthly Progress Reports, Schedule of Values, or request for approval of subcontractors.
  - H. Unauthorized deviations by the Contractor from the Contract Documents.
28. **INSURANCE - LIABILITY:** Each Contractor shall procure and maintain, at his own expense, until his work is accepted by the Owner, liability insurance as hereinafter specified. All such insurance shall be subject to the approval of the Owner for adequacy of protection, and shall include a provision preventing cancellation without thirty (30) days' prior notice to the Owner in writing. All policies must contain a "Registered Notice" of cancellation endorsement directed to Town of Lyons and the bonding company on the project. The Owner will accept the policies written only by sureties legally authorized in the State of Colorado and rated in Best's Insurance Guide (latest edition), not lower than A- or have a Best's Financial Rating of at least X.

The liability insurance coverage required is as follows:

- A. Contractor's General Public Liability and Property Damage Insurance issued to the Contractor and protecting him from all claims for destruction of or damage to property, arising out of or in connection with any operations under his Contract, whether such operations be by himself or by a subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him.



## General Conditions (continued)

All such insurance shall be written with a limit of liability not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting there from sustained by any one person in any one occurrence; a limit of liability not less than \$1,000,000 for any such damages sustained by two or more persons in any one occurrence; a limit of liability not less than \$1,000,000 for all damages arising out of injury or destruction of property in any one occurrence, and \$2,000,000 aggregate. All such insurance shall be written on a Comprehensive Form of Policy.

In the event of any of the hazards or exposures, normally listed in standard policies as "Exclusions," are involved or required under this Contract, then such hazards or exposures shall be covered and protection afforded under the policy and such exclusions (x), (c) and (u), as excerpted from standard policies, must be removed from the policy as listed below:

- 1) "(x) Injury to or destruction of any property arising out of blasting or explosion, other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment."
- 2) "(c) The collapse of or structural injury to any building or structure due to:
  - a) grading of land, excavating, burrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work; or
  - b) moving, shoring, underpinning, raising or demolition or any building or structure, or removal or rebuilding of any structural support thereof;"
- 3) "(u) a) Injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling; or  
b) injury to or destruction of property at any time resulting therefrom."

- B. General Public Liability and Property Damage Insurance issued to "Town of Lyons, Colorado, its directors, its officers, its agents, and its employees acting in the scope and course of their employment", and protecting them from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract, whether such operations be by the Contractor or by a subcontractor under him or by anyone directly or indirectly employed by the Contractor or a subcontractor under him. All such insurance shall have the minimum limits of liability specified in A, above. All such insurance policies shall be delivered to the Owner within ten (10) days after the date of the Notice of Award.

## General Conditions (continued)

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- C. Contractor's Automobile Liability and Property Damage Insurance issued to the Contractor protecting the Contractor and the Owner from all claims, for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the Contractor's Contract, whether such operations be by the Contractor or by a subcontractor under him or by any one directly or indirectly employed by the Contractor or a subcontractor under him. All such insurance shall be written with a limit of liability of \$1,000,000 each person, \$1,000,000 each occurrence, for Bodily Injury, and of \$1,000,000 each occurrence, for Property Damage. All such insurance policies shall be delivered to the Owner within ten (10) days after the date of the Notice of Award.
- D. The parties hereto understand and agree that the Owner is relying on and does not waive or intend to waive by this Contract any provision hereof, including the provision of this section, the monetary limitations, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as from time to time amended, or otherwise available to the Owner.
29. **INSURANCE - WORKERS' COMPENSATION:** Each Contractor shall maintain at his own expense, until completion of the Work and final acceptance thereof by the Owner, Workers' Compensation Insurance, including occupational disease provisions, covering the obligations of the Contractor in accordance with the provisions of the laws of the State of Colorado. Each Contractor shall furnish the Owner with a certificate giving evidence that such Contractor is covered by the Workers' Compensation Insurance herein required, each certificate specifically stating that such insurance includes occupational disease provisions. All such certificates shall be furnished within ten (10) days after the date of the Notice of Award.
30. **INSURANCE - BUILDER'S RISK COMPLETED VALUE:** The Contractor shall pay for and maintain Builder's Risk Completed Value Insurance, insuring the entire project and the Work against loss or damage caused by fire, malicious mischief, vandalism, and the hazards insured against in the standard extended coverage provisions used in the State of Colorado, which insurance shall remain in effect until 12:00 noon on the day following the Date of Completion and final acceptance of the entire project, whether or not the building or some part thereof is occupied in any manner prior to final acceptance of the project. Such insurance must be in an amount equal to the aggregate total of the contract prices in the Contracts entered into by the Owner relating to the project, and must be issued by a company or companies acceptable to the Owner. Each subcontractor shall reimburse the Contractor in part in respect of the premiums paid by the Contractor for such insurance, each subcontractor paying a portion of the total premiums in the same ratio as the ratio of the insurance represented by the contract price in his Contract to the total insurance carried.

Upon request by the Owner, the amount of such insurance shall be increased to include the cost of work to be done on the project, or materials or equipment to be incorporated in the project, by the Owner or under contracts let or to be let by the Owner not covered by these



## General Conditions (continued)

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General Contract Conditions. In such event, the Owner shall pay the Contractor as its share of the insurance premiums a portion of such premiums in the same ratio as the ratio of the insurance represented by such independent Contracts let or to be let by the Owner to the total insurance carried.

All such insurance shall insure the Owner and the Contractor, as their interests may appear, but the loss, if any, shall be payable to the Owner, as trustee, except as it may be necessary to permit payment of all or a portion of such insurance to a mortgagee as his interests may appear, and all such insurance policies shall be lodged with the Owner within ten (10) days after the date of the Notice of Award. The Owner shall have power to adjust and settle any loss with the insurers.

Unless the Owner and the Contractor shall agree otherwise, all moneys received shall be applied on rebuilding or repairing the destroyed or injured work. With the exception of insurance proceeds attributable to insurance paid for by the Owner (by paying its share of the premiums paid by the Contractor), such moneys shall be paid out by the Owner to the Contractor from time to time on estimates of the Owner.

All subcontractors shall supply the Contractor with such information as he may need to obtain such insurance, within time to enable the Contractor to obtain the insurance within the time limit stated above.

The Contractor and his subcontractors and suppliers waive all rights against the Owner for damages caused by fire or other perils to the extent covered by the Builder's Risk Insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner on their behalf. The Contractor shall require similar waivers of his subcontractors, sub-subcontractors, agents, and employees of any of them.

- 31. SEPARATE CONTRACTS:** The Owner reserves the right to let other Contracts in connection with the Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. His failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Owner any discrepancy between the executed work and the drawings.

## General Conditions (continued)

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32. **SUBCONTRACTS:** The Contractor shall within ten (10) days after the execution of the Contract or before awarding any subcontracts shall submit in writing to the Owner and Engineer a final list of all subcontractors and suppliers proposed. The Contractor shall not employ any to which the Owner may, within a reasonable time, object as incompetent, unfit, or otherwise undesirable. Substitutions of subcontractors named in the final list may not be made without written approval of the Owner.

If before or after the execution of the Contract, a change of any name on such list is required in writing by the Owner, the Contract price shall be increased or diminished by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

The Owner shall, on request, furnish to a subcontractor, wherever practicable, evidence of the amount certified on his account. The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any direct contractual relation between any subcontractor and the Owner.

33. **CONTRACTORS' MUTUAL RESPONSIBILITY:** The entire project may be covered by more than one Contract and in such case there will of necessity be a certain overlapping of Contracts. Each Contractor shall, therefore, take due notice of the work called for in Contracts other than his own. Should the Contractor cause damage to any separate contractor on the Work, the Contractor agrees, upon due notice, to settle with such contractor by agreement, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and, if any judgment against the Owner arises there from, the Contractor shall pay or satisfy it and pay all costs and expenses thereby incurred by the Owner.

34. **CUTTING, PATCHING AND DIGGING:** The Contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the drawings and specifications for the completed unit, and he shall make good after them as the Owner may direct.

Any cost caused by defective or ill-timed work shall be borne by the persons responsible therefor. The Contractor shall not endanger any work by cutting, excavating, or otherwise altering any work, and shall not cut or alter the work of any other contractor save with the consent of the Owner or Engineer.

After such work has been installed, he shall carefully fit around, close up, repair, patch, and point up same as directed to the entire satisfaction of the Owner.

## General Conditions (continued)

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35. **EMPLOYEES:** The Contractor and its subcontractors shall at all times enforce strict discipline and good order among its employees, and shall not employ on the work any person considered by the Engineer or the Owner to be unfit or not skilled in the work assigned to the Contractor. The Contractor shall be responsible to the Owner for the acts and omissions of all its employees.

The Contractor shall further be responsible for the acts and omissions of all subcontractors, their agents and employees, and all other persons acting on behalf of the Contractor or subcontractors as set forth herein.

During the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, creed, disability, sex or age.

36. **CLEANING UP:** The Contractor shall at all times keep the premises free from accumulations of any type of waste material or rubbish caused by his employees or work, and shall remove all rubbish as often as directed by the Owner. At the completion of the Work he shall remove all his rubbish from and about the building, and all his tools, scaffolding, and surplus materials, shall wash all glass inside and outside throughout the building and remove all stains and other marks, paint or materials from windows and frames. Care shall be taken not to scratch the glass in this clean-up.

All floors and wall coverings shall be left thoroughly clean and finished, all walls and ledges shall be dusted, all plumbing fixtures shall be cleaned, all hardware shall be free of all paint, stains, dust, dirt and the like. The Contractor shall remove marks, stains, fingerprints, other oil, dirt from painted, decorated or natural finish work, and turn over the building to the Owner ready for occupancy except for being further equipped by the Owner. In case of dispute the Owner may remove the rubbish and charge the cost to the Contractor.

37. **USE OF PREMISES:** The Contractor shall confine his apparatus, the storage of materials and the operations of his workers to limits indicated by law, ordinances, permits, or directions of the Owner and shall not unreasonably encumber the premises with his materials. The Contractor shall enforce the Owner's instructions regarding signs, advertisements, fires, and smoking.

During the performance of the Work, the Contractor and his subcontractors and their employees, agents or suppliers, will use such entrance or entrances to the construction site that may be designated from time to time by the Owner. Further, the Contractor and his subcontractors, their employees and agents shall perform the Work at such times of the day and days of the week as may be designated by the Owner from time to time.

38. **LIQUIDATED DAMAGES FOR DELAY IN COMPLETION:** It is understood and agreed that completion of the entire project within the time stated in the Instructions to Bidders and the Construction Agreement is a matter of vital necessity to the Owner, that the Owner will sustain damages if the entire project is not completed within that time, and that it would not be possible to accurately determine the amount of such damages. In view of these

## **General Conditions (continued)**

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facts, the Contractor agrees to pay the Owner liquidated damages in the sum set forth in the Construction Agreement for each calendar day, if any, which elapses between the date stated in the Instructions to Bidders as the date when the entire project must have been finally completed and accepted, as extended by extensions of time under the provisions of the General Contract Conditions, and the Date of Completion. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the surety on his performance bond shall pay such damages. Also, the Owner may withhold all or any part of such liquidated damages from any payments due the Contractor. No changes in the Work shall extend the time for completion unless set forth on a properly approved Change Order.

If any part of such delay in the completion of the entire project shall be attributable to any default by any contractor other than the Contractor, the Contractor may recover from the contractor responsible for such delay such portion of the liquidated damages paid by the Contractor to the Owner as may be attributable to such other contractor.

- 39. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENT:** When the Work is complete and ready for final inspection, the Contractor shall file a written notice with the Engineer that the work, in the opinion of the Contractor, is complete under the terms of the Contract.

Within a reasonable time after the Contractor files written notice that the Work is complete, the Engineer, Owner and the Contractor shall make a "final inspection" of the project to determine whether the Work has been completed in accordance with the Contract Documents. A report of that inspection and a final punch list shall be made by the Engineer in sufficient detail to fully outline to the Contractor:

- A. Work to be completed if any;
- B. Work not in compliance with the drawings or specifications, if any;
- C. Unsatisfactory work for any reason, if any.

Copies of the punch list will be transmitted by the Engineer to the Contractor and Owner.

All prior estimates and payments shall be subject to correction in the final Application for Payment. When the Work has been certified as satisfactory by the Owner, and the Engineer, and approved by action of the Owner's Board of Trustees, it shall be deemed accepted upon issuance of the Owner's Letter of Acceptance, which shall also state the Date of Completion.

Upon submission of the final Application for Payment, the time of final settlement for the Work shall be set and shall, thereupon, be advertised by two (2) publications of notice thereof, the last publication appearing at least ten (10) days prior to the time of final settlement. Final payment and settlement in full shall be made at the time of final settlement thus advertised, or as soon thereafter as practicable, in the judgment of the Owner, after resolution of claims and backcharges. The Owner shall not authorize final payment until all the items on the final punch list are complete, all operation and maintenance manuals accepted and all close-out documents filed with the Owner.

## General Conditions (continued)

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If the Work shall be substantially completed, but final completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of the Contractor, the Owner may, in its discretion, release to the Contractor such amounts as may be in excess of three (3) times the cost of completing the unfinished work or the cost of correcting the defective work, as estimated by the Engineer and approved by the Owner.

Neither the final payment nor any part of any sums withheld shall become due until the Contractor delivers to the Owner receipts showing complete payment for all labor, materials, supplies and equipment expended upon or incorporated in the work under the Contractor's Contract with the Owner. If any unpaid claim for such labor, materials, supplies, or equipment is filed with the Owner before payment in full of all sums due the Contractor sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing with the Owner a receipt in full or an order for withdrawal signed by the claimant or his duly authorized agent or assignee. However, as provided by statute, such funds shall ordinarily not be withheld longer than ninety days following the date fixed for final settlement with the Contractor, as set forth in the published Notice of Contractor's Settlement, unless an action shall be commenced within that time to enforce such unpaid claim and a Notice of Lis Pendens be filed with the Owner. At the expiration of such ninety day period, the Owner shall pay the Contractor such moneys and funds as are: i) not the subject of a backcharge or retention by the Owner under the Contract Documents or ii) not the subject of suit and a Notice of Lis Pendens. The Owner ~~and~~ shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of such judgment as may result from such suit.

If any claim for such labor, materials, supplies, or equipment remains unsatisfied after all payments are made by the Owner to the Contractor, the Contractor shall refund to the Owner all sums which the latter may for any reason be compelled to pay to satisfy such claim, including all costs and attorney's fees incurred by the Owner as a result of the Contractor's default in such respect.

The making and acceptance of the final payment shall not constitute a waiver nor an accord and satisfaction of any claims by the Owner, including, among other things, those arising from unpaid claims, from faulty work appearing before or after final payment or from failure to comply with requirements of the Contract Documents.

40. **WARRANTIES:** Each Contractor shall, in case of work performed for which warranties are required by the specifications, secure the required warranties and deliver copies thereof to the Owner upon completion of the work bound into the operations and maintenance manuals. All such warranties shall commence from the date set forth in the Owner's Letter of Acceptance and will not in any way lessen the Contractor's responsibilities under his Contract. Whenever guarantees or warranties are required by the specifications for a longer period than two (2) years, such longer period shall govern.

In addition to warranties, guarantees, operating instructions, etc., elsewhere specified, the Contractor, at the conclusion of the Work and before final payment is made, shall furnish a

## General Conditions (continued)

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listing, giving names, addresses, and telephone numbers of all subcontractors and material suppliers who furnished labor or materials on the job, with identification of the services rendered. There shall be provided one copy for the Engineer and three (3) copies for the Owner, bound into the operations and maintenance manuals.

41. **GUARANTEE AFTER COMPLETION:** The Contractor expressly warrants and guarantees that the project will be constructed in a first-class, workmanlike manner in all respects; that it will be safe, free from structural defects and defects in workmanship and materials; and that the improvements will be suitable and fit for occupancy and for the purpose for which they were intended.

Neither the Engineer or Owner's final estimate, Board of Trustees approval, nor payment of the Final Application for Payment or of any sum withheld from the Contractor, shall relieve the Contractor of responsibility for his warranty or for faulty materials or workmanship. Unless otherwise specified below, the Contractor shall remedy any defects due thereto, and pay for any damages resulting therefrom, which shall appear within a period of two (2) years from the Date of Completion set forth in the Owner's Letter of Acceptance. The Contractor's guarantee shall not extend to manufactured equipment which has been specified and purchased for the project and for which a separate guarantee has been issued to the Owner by such manufacturer.

The Owner, Engineer, and the Contractor together shall make at least three (3) complete inspections of the Work after the work has been accepted by the Owner. One such inspection shall be made approximately six (6) months after the acceptance of the Work; and another such inspection shall be made approximately twelve (12) months after the acceptance of the Work; and a third such inspection shall be made twenty-three (23) months after the acceptance of the Work. The Engineer shall make a written report of these inspections certified as to contents and date of inspection, and forward these reports by mail to the Owner and Contractor within seven (7) days after completion of the inspections. The Contractor shall immediately initiate such remedial work as may be necessary to correct any deficiencies or defective work shown by this report, and shall promptly complete all such remedial work in a satisfactory manner.

If the Contractor fails to promptly correct all deficiencies and defects shown by the report, the Owner may do so itself, after giving the Contractor ten (10) days' written notice of its intention to do so. The Owner shall be entitled to collect from the Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as damages resulting from such deficiencies and defects. The guarantee and warranties of the Contractor are in addition to and not in lieu of any other remedies available to the Owner.

42. **MISCELLANEOUS KEYS, SWITCHES, ETC:** Except as otherwise specifically required by the technical specifications at the completion of the project, all loose keys for hose bibbs, adjustment keys and wrenches for door closers and panic hardware, keys for electric switches, electrical panels, and all other equipment shall be identified and accounted for and turned over to the Engineer for transmittal to the Owner.



## General Conditions (continued)

43. **INDEMNIFICATION:** The Contractor shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Owner or its agents or employees by any employee of the 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 this article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

44. **LABOR DISPUTES:** Notwithstanding any other provision contained elsewhere herein, and superseding any contrary term expressed herein, the Contractor agrees that in the event of any picket or other form of labor dispute at the construction site, whether that dispute or picket is in connection with the Contractor, subcontractor or any other person or entity on the construction site, the Contractor will continue to perform the Work required herein without interruption or delay. In the event the Contractor fails to continue the performance of the Work included herein, without interruption or delay, because of such picket or other form of labor dispute, the Owner may terminate the services of the Contractor after giving forty-eight (48) hours written notice of an intent to do so. The terminated Contractor may then be replaced at the discretion of the Owner and all extra costs involved in doing so shall be payable by the terminated Contractor.

During the performance of the Work required by the Agreement, the Contractor and his subcontractors and their employees, agents or suppliers, will use such entrance or entrances to the construction site that may be designated from time to time by the Owner. Further, the Contractor and his subcontractors, their employees and agents shall perform the Work at such times of the day and days of the week as may be designated by the Owner from time to time.

45. **LIMITATION OF ACTIONS:** Any actions against the Contractor, his subcontractors, suppliers or others providing materials or services for the project, to recover damages for injury or loss to person or property, including loss or damage to the Work or the project itself, or defects in materials, caused by the design, planning, supervision, inspection, manufacture, supplying, construction or observation of construction of the project shall be brought within six (6) years after such claim for relief arises and the nature, extent and cause is fully discovered. In no case shall such an action be brought more than fifteen (15) years after the Date of Completion and acceptance of the project.

46. **COLORADO PREFERENCES:** In compliance with Colorado Revised Statutes, §§

## General Conditions (continued)

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8-17-101 and 8-17-102, preference shall be given to Colorado labor in the several classifications of skilled and common labor, and not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed shall be Colorado labor. The term "Colorado labor" means any person who has been a bona fide resident of the State of Colorado at the time of employment without discrimination as to race, color, creed, religion, age, sex, national origin, or disability. By reference, the entire provisions of said statutes are made a part of this section.

In compliance with Colorado Revised Statutes, § 8-19-101, preference shall be given to Colorado resident bidders against nonresident bidders from another state or foreign country. Preference shall be equal to the preference of a nonresident bidder in the state or foreign country, in which the nonresident bidder is a resident.

47. **SALES AND USE TAX REFUND:** The Contractor shall consult and coordinate with the Owner to ascertain whether a sales or use tax may be collectable on purchases of materials, supplies and equipment used for this project by the Contractor. Whenever possible, the Contractor shall have materials, supplies, and equipment for this project delivered to the construction site by common carrier, conveyance by the seller, or by mail to avoid city or municipal sales and use taxes for which refunds will not be made to the Owner.

The Owner is exempt from the payment of any State sales and use taxes for materials, supplies and equipment used upon this project by the Contractor and subcontractors. For the purpose of exercising such exemption, the Contractor and all his subcontractors shall be responsible for the fulfillment of the following requirements:

- A. The Contractor and all subcontractors shall apply for and obtain a Certificate of Exemption of State sales/use taxes for the project from the Colorado Department of Revenue. A copy of such shall be filed with the Owner. No materials shall be purchased nor shall any work be commenced hereunder until such certificate is obtained.
- B. The final bill submitted by the Contractor for final payment shall show the net cost of all materials purchased by the Contractor and all subcontractors.
- C. At the time of final completion, the Contractor and his subcontractors shall execute affidavits, in duplicate, showing the amount of local municipal sales or use taxes, if any, paid by the Contractor or subcontractors upon materials used on the project, which affidavits shall further state that all such materials have been "built in" to the project, and where books and records and other substantiating evidence of payment of said tax are located and where they may be examined by appropriate governmental authorities, if such examination is required.
- D. The Contractor and all subcontractors shall maintain sufficient records to verify the amount of sales and use taxes paid to any local governmental entity. Failure to keep such records, resulting in the inability of the Owner to claim a refund for sales and use taxes for such materials, if allowed, shall render the Contractor or subcontractor



## General Conditions (continued)

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liable for the amounts of such tax refund as determined by the Engineer's cost estimates of such materials.

48. **LIENS AND CLAIMS:** Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, § 38-26-107, Colorado Revised Statutes, as amended, provides relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of particular public work, in that final payment may not be made to a Contractor until all such creditors have been put on notice by publication press of such pending payment and given opportunity to stop payment to the Contractor in the amount of such claims. See Completion, Final Inspection, Acceptance and Final Payment.

## **ATTACHMENT A**

### **FEDERAL EMERGENCY MANAGEMENT AGENCY'S ("FEMA") GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS**

The work or services under the contract to which this Attachment A is attached ("Agreement") are funded in whole or in part through a grant from the Federal Emergency Management Agency's Grant Program which requires compliance with all the provisions contained in this Attachment to the Agreement and all other applicable Federal and State laws and regulations. If the Agreement is between the Town and the "Consultant," the term "Contractor" as used herein shall mean the "Consultant." The provisions below are incorporated into and made part of the Agreement.

**1.0 PERFORMANCE AND PAYMENT BONDS (44 C.F.R. § 13.36(H)(2) AND (3)):** Contractor must provide both a performance bond and a payment bond acceptable to the Town, each for one hundred percent (100%) of the Contract Price.

**2.0 EQUAL EMPLOYMENT OPPORTUNITY:** If this Agreement is for compensation in excess of \$10,000.00 (Contract Price > \$10,000), during the performance of this Agreement, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted

construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the portion of the sentence immediately preceding subparagraph (1) and the provisions of subparagraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

### **3.0 COPELAND ANTI-KICKBACK ACT (44 C.F.R. SECTION 13.36(i)(4)):**

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause in subparagraph (1) above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.
- C. Breach. A breach of the subparagraph contract clauses (1) or (2) above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**4.0 COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** If this Agreement is for compensation in an amount greater than \$100,000.00 (Contract Price > \$100,000), the following shall apply:

- A. 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.
- B. 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.

- C. Withholding for unpaid wages and liquidated damages. The Town 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.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (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 subparagraphs (1) through (4) of this section.

**5.0 NOTICE OF STATE AND FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REPORTING REQUIREMENTS AND REGULATIONS:**

- A. General. The Town is using Public Assistance grant funding awarded by FEMA to the State of Colorado and/or the Town to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under major disaster declaration FEMA-DR-4145, FEMA requires the State and thus the Town to provide various financial and performance reporting.
  - (1) It is important that the Contractor is aware of these reporting requirements, as the Town may require and the Contractor agrees to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of Colorado which, in turn, will enable the State of Colorado to satisfy reporting requirements to FEMA.
  - (2) Failure of the State of Colorado to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of federal financial assistance awarded to fund this Contract.
- B. Applicable Regulations and Policy. The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
  - (1) 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
  - (2) 44 C.F.R. § 13.41 (Financial Reporting)
  - (3) 44 C.F.R. § 13.50(b) (Reports)
  - (4) 44 C.F.R. § 206.204(f) (Progress Reports)
  - (5) FEMA Standard Operating Procedure No. 9570.14, Public Assistance Program Management and Grant Closeout Standard Operating Procedure (Dec. 2013)
  - (6) FEMA-State (or Tribal) Agreement

- C. **Financial Reporting.** The State of Colorado is required to submit to the following financial reports to FEMA:
- (1) **Initial Report.** An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4145.
  - (2) **Quarterly Reports.** Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
  - (3) **Final Report.** A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.
- D. **Performance Reporting.** The State of Colorado is required to submit to the following financial reports to FEMA:
- (1) **Initial Report.** An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4145.
  - (2) **Quarterly Reports.** Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
  - (3) **Final Report.** A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

**6.0 ACCESS TO RECORDS:** The following access to records requirements apply to this Agreement:

- A. The Contractor agrees to provide the Town, the State of Colorado, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to provide the Town, the State, the FEMA Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

**7.0 RETENTION OF RECORDS:** The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Town, the State of Colorado, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**8.0 CLEAN AIR ACT:** If this Agreement is for compensation in excess of \$150,000.00 (Contract Price > \$150,000):

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the State of Colorado, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

**9.0 FEDERAL WATER POLLUTION CONTROL ACT:** If this Contract is for compensation in excess of \$150,000.00 (Contract Price > \$150,000):

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. Contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the State of Colorado, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

**10.0 ENERGY CONSERVATION:** The Contractor agrees to comply with 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.

**11.0 SUSPENSION AND DEBARMENT:** This Section applies if this Agreement/Contract or any subcontract awarded hereunder is for a "covered transaction" to include:

- (a) This Contract or any subcontract awarded hereunder is awarded in the amount of at least \$25,000, or
  - (b) This Contract or any subcontract awarded hereunder requires the approval of FEMA, regardless of amount.
- A. If this Contract or any subcontract awarded hereunder is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, the Contractor is required to verify that none of the Contractor or any subcontractor as the case may be, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By signing this Agreement, the Contractor 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 covered transactions by a federal department or agency;
  - (2) have not within a five-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default; and

- (3) have not within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for (a) the 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 public transaction, or (b) 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
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the Town. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Colorado and the Town), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

**12.0 AMERICANS WITH DISABILITIES ACT:** The Contractor shall be in compliance with the appropriate areas of the Americans with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of any purchase order or contract and with any new purchase order or contract issued by the Town.

**13.0 DAVIS BACON/PREVAILING WAGES: Check the Applicable Provision Below:**

☒ Contractor/subcontractor is responsible for complying with the Davis Bacon Act (40 U.S.C. §§276a to 276a-7) as supplemented by Department of Labor regulations at 29 CFR pt.5, determining the applicable prevailing wage requirements pertaining to Contractor/Subcontractor's Work, and will strictly comply with the requirements. Contractor/Subcontractor will keep complete and accurate records containing the name, address, the occupational title or titles for the work performed, the rate of pay, daily and weekly hours worked for each occupational title, deductions made, and actual wages paid for work performed by each worker. Subcontractor will submit the required compliance form and a reasonable number of certified copies of current payroll records on the proper form. Receipt of the information will be a condition precedent to making any payments to the Contractor/Subcontractor.

**OR**

☐ Davis-Bacon Act wage rates as determined by the U.S. Department of Labor shall not apply for the construction of this project. (Stafford Act does not require Davis-Bacon Wage Act compliance if the Work is funded only with FEMA emergency funding.)

**14.0 PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not



inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

**15.0 AGREEMENT TO EXECUTE OTHER REQUIRED DOCUMENTS:** Contractor and all subcontractors, by entering into the Agreement, understand and agree that funding for the Work is provided under federal and/or state programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Contractor agrees to execute such amendments or further agreements as may be necessary to ensure that the Town funding for the Work is provided.

**16.0 CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS:** The Contractor and subcontractors will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible including, but not limited to, the following:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

**17.0 COPYRIGHTS:** The Contractor acknowledges and agrees that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

**18.0 BYRD ANTI-LOBBYING AMENDMENT:** If this Contract is for compensation in excess of \$100,000.00 (Contract Price > \$100,000), the following shall apply:

- A. Contractor represents and acknowledges that it has filed the required certification that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352.
- B. The Contractor or subcontractor shall obtain the certification set forth in subparagraph (A) of this section from any subcontractors and will insert in any subcontracts a clause requiring the subcontractors to obtain this certification from any lower tier subcontractors.



- C. The prime Contractor shall be responsible for compliance with the clauses set forth in subparagraphs (1) and (2) of this section by any subcontractor or lower tier subcontractor.

**19.0 PROCUREMENT OF RECOVERED MATERIALS:** If the Town constitutes "a political subdivision of a state" as defined in 2 C.F.R. §200.322, Contractor agrees to comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, Contractor must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery;  
and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

**20. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:** Check the Applicable Provision Below:

- ☐ **[If checked, Attachment D is incorporated into this Agreement by reference.]** The federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2(a) and this contract is between the Town and a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement, the Town shall comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperating Agreements," and any implementing regulations issued by the awarding agency.
- ☒ The federal award does not qualify as a "funding agreement" and/or is not a contract with small business firm or nonprofit organization for the purpose of the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement.

## ATTACHMENT B



### **CDBG-DR PUBLIC INFRASTRUCTURE PROGRAM REQUIRED PROCUREMENT AND CONTRACT DOCUMENTS**

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#### **INSTRUCTION TO BCC PARTNERS AND SPECIAL DISTRICTS**

This packet contains general conditions for use with procurement contract and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. This Boulder County Collaborative (BCC) Community Development Block Grant – Disaster Recovery (CDBG-DR) required bid and contract documents must be included as an attachment, expressly made a part of, and incorporated by reference.

This is a federally funded project. The contractor and subcontractors must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contained at 2 CFR Part 200. However, Federal Emergency Management Agency (FEMA) Match projects are required to comply with 44 CFR Part 13.36 instead of 2 CFR Part 200.

Minority and Women Owned Business Enterprises, Labor Surplus Area Firms, and Section 3 Business Concerns seeking bid opportunities under this project are encouraged to respond.

The Provision of this Agreement shall apply to subcontractors and their officers, agents and employees in all respects as if they were employees of the contractor. The contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of subcontractors, and their officers, agents and employees, as if they were employees of the contractor.

#### **FEDERAL REGISTER NOTICES**

##### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Federal Register Notices applicable to the use of CDBG-DR Funds are available on the HUD Web site at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices>.

#### **SECTION 3 NOTICE**

HUD recently issued proposed amendments to the Section 3 regulations in 24 CFR Part 135. If HUD finalizes and promulgates the amendments to 24 CFR Part 135 during the term of this Agreement, the Contractor or Subrecipient will be required to adhere to the amended 24 CFR Part 135.

Boulder County Collaborative Community Development Block Grant Disaster Recovery (CDBG-DR) is an Equal Opportunity Employer and no otherwise qualified individual shall be subjected to discrimination on the basis of race, color, religion or religious affiliation, sex, familial status, age, genetics, disability, or national origin in any phase of employment.

**Enclosed is a set of documents related to compliance with Federal and local requirements concerning public infrastructure and facilities improvement projects under Boulder County Collaborative CDBG-DR.**

*Note: This document is to be used as a guide for contractors and subcontractors working on Boulder County Collaborative Community Development Block Grant Disaster Recovery projects. It is not verified to be all inclusive and the contractor is fully responsible for complying with all federal regulations applicable to the CDBG program.*

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## I. STANDARD CDBG CONTRACT PROVISIONS SUMMARY

1. Contracts other than small purchases shall contain administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
2. All contracts in excess of \$10,000 shall contain suitable provision for termination for cause and for convenience by the grantee, including the manner by which it will be effected and the basis for settlement.
3. All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
4. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3).
5. All construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5).
6. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the Department of Labor regulations (29 CFR, Part 5).
7. The contract shall include notice of requirements and regulations pertaining to reporting and patent rights respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.
8. All negotiated contracts awarded by grantees shall include a provision to the effect the grantee, subgrantee, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
9. Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.
10. Contracts, subcontracts, and subgrants of amounts in excess of \$150,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use of non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grant agency and to the USEPA Assistance Administrator for Enforcement (EN-329).
11. Contracts shall recognize 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 (P.L. 94-163).

## II. APPLICABLE PROVISIONS CHECKLIST

Check all boxes that apply for this procurement/contract, then refer to applicable sections throughout this document.

### Type of Contract:

- ☐ Professional Services ☒ Construction

### Solicitation Type:

- ☐ Small Purchase (under \$150,000 for CDBG-DR projects and \$100,000 for FEMA Match projects or more stringent local requirement)  
☐ Request for Proposals or Requests for Qualifications above the small purchase limit  
☒ Invitation for Bid above the small purchase limit

### Applicable Provisions:

- ☒ Administrative, Contract, or Legal Remedies (all contracts in excess of \$150,000)  
☒ Termination Clause (all contracts in excess of \$10,000)  
☒ Equal Employment Opportunity (all construction contracts in excess of \$10,000)  
☒ Davis Bacon Act (all construction contracts in excess of \$2,000 except for new construction, rehabilitation, demolition, or elevation of non-contiguous housing units or 8 or less contiguous housing units)  
☒ Contract Work Hours and Safety Standards Act (all contracts in excess of \$100,000 that employ mechanics or laborers)  
☒ Copeland Anti-Kickback Act (if Davis Bacon applies)  
☒ Rights to Inventions Clause (all contracts)  
☒ Clean Air Act and the Federal Water Pollution Control Act (all contracts in excess of \$150,000)  
☒ Debarment and Suspension (all contracts)  
☒ Byrd Anti-Lobbying Amendment (all contracts in excess of \$100,000)  
☒ Procurement of Recovered Materials (all contracts that procure in excess of \$10,000 of materials)  
☒ Section 3 Clause (all contracts in excess of \$100,000)  
☒ Energy Efficiency Clause (all contracts)

### Applicable Forms:

#### Forms to be Submitted WITH Contractor's Bid/Proposal

- ☒ MBE/WBE and Labor Surplus Area Procurement Clause  
☒ Form of Statement of Bidder's Qualifications (all bids/proposals)  
☒ Wage/Fringe Benefit Certification Form (only if Davis Bacon applies)  
☒ Report of Additional Classification and Rate (HUD 4230-A form) (only if Davis Bacon applies)  
☒ Bid Bond Certification (5% bond for construction bids over \$100,000)  
☒ Certificate of Corporate Principal (all bids/proposals)  
☒ Certification of Bidder Regarding Equal Employment Opportunity (construction bids over \$10,000)  
☒ Certification of Bidder Regarding Federal Labor Standards and Davis-Bacon Act (only if Davis Bacon applies)  
☒ Certification of Contractor/Subcontractor Regarding Section 3 and Segregated Facilities (only if Section 3 applies)  
☒ Certifications of Bidder Regarding Civil Rights (all bids/proposals)  
☒ Non-Collusion Affidavit of Prime Bidder (all bids/proposals)  
☒ Contractor/Subcontractor's Section 3 Plan (only if Section 3 applies)  
☒ Contractor/Subcontractor's Section 3 Tables A & B (only if Section 3 applies)

**Forms to be Submitted PRIOR TO Contract Award**

- ☒ Certification of Bidder Regarding Section 3 (only if Section 3 applies)
- ☒ Section 3 Certification for Business (only if Section 3 applies)
- ☒ Performance Bond (100% of contract award for all construction contracts over \$100,000)
- ☒ Payment Bond (100% of contract award for all construction contracts over \$100,000)

**Additional Forms for Use DURING Contract Term**

- ☒ Certified Payroll Form (only if Davis Bacon applies)
- ☒ Payroll Deduction Authorization Form (only if Davis Bacon applies)
- ☒ Other Deductions on Certified Payroll (only if Davis Bacon applies)
- ☒ Section 3 Monthly Compliance Form (only if Section 3 applies)
- ☒ Employee Data and Certification Form (only if Section 3 applies)
- ☒ Section 3 Posted Notice to Project Residents (only if Section 3 applies)
- ☒ Required Jobsite Posters
  - ☒ Applicable Wage Determination (only if Davis Bacon applies)
  - ☒ Equal Employment Opportunity (construction contracts over \$10,000)
  - ☒ Employee Rights Under the Davis-Bacon Act (only if Davis-Bacon applies)



### III. FEDERAL CONTRACT PROVISIONS

#### SECTION 1 – GENERAL INFORMATION

##### CONFLICT OF INTEREST

2 CFR 200.318 & 24 CFR 570.611

In the procurement of supplies, equipment, construction and or services by recipients and subrecipients, any conflict of interest is prohibited. No persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

##### CODE OF CONDUCT

2 CFR 200.317 & 2 CFR 200.318

The recipient of CDBG grant funds shall maintain written standards of conduct governing the performance of employees engaged in the award and administration of contracts stating that no employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved.

##### RECORD RETENTION

2 CFR 200.333 & 24 CFR 570.506

Financial records, supporting documents, statistical records and all other records pertinent to a grant shall be retained for a period of five years. If any litigation, claim, negotiation, audit or other action is started before the expiration of the five-year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final expenditure report or, from the date of the submission of the annual financial status report covering the last expenditure of grant funds for that year.

##### ACCESS TO RECORDS

2 CFR 200.336

The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records which are pertinent to the grant in order to make audits, examinations, excerpts and transcripts. The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

##### CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(2 CFR 200.326. Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 – 49 CFR 20)

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

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.

This certification is a material representation of fact upon which reliance was placed with this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 311352. 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.

The prospective participant also agrees 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 recipients shall certify and disclose accordingly.

## RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

2 CFR 200.326 & 37 CFR 401

For any funding agreement (contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority) awarded to a small business firm (defined at 15 U.S.C. 632 and 13 CFR 121.5) or nonprofit organization (except those subject to 35 U.S.C. 212) for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government, the standard clause at 37 CFR 401.14 or the alternative provisions at 37 CFR 401.03 apply.

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION PRIMARY COVERED TRANSACTIONS

(2 CFR 200.213 & 2 CFR 200.326. Applicable to all Federal-aid contracts 49 CFR 29)

By signing and submitting this proposal, the prospective primary participant is providing the certification set out below. 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 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 primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

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

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

The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary 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.

The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

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.

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.

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

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

Have not within a 3-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 statement, or receiving stolen property.

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 this certification; and have not within a 3-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

#### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION APPLICABLE TO ALL SUBCONTRACTS, PURCHASE ORDERS AND OTHER LOWER TIER TRANSACTIONS OF \$25,000 OR MORE

##### 2 CFR 200.213 & 2 CFR 200.326

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

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.

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. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. 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.

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.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non procurement List.

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.

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.

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 participation in this transaction by any Federal department or agency.

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.

## OTHER PROVISIONS

Any and all contractors, subcontractors, independent contractors, suppliers, facilitators or any person participating in any program or activity receiving federal financial assistance shall:

- a. Prohibit discrimination based on race, color or national origin under Title VI of the Civil Rights Act of 1964;
- b. Prohibit discrimination on the basis of sex under Title VII of the Civil Rights Act of 1964 and amended by the Equal Employment Opportunity Act of 1972;
- c. Prohibit discrimination on the basis of age under the Age Discrimination Act of 1975;
- d. Prohibit discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973;
- e. Take affirmative action to employ and advance qualified disabled people under Section 503 of the Rehabilitation Act of 1973
- f. Promote and insure equal opportunity for all persons, without regard to race, color, religion, sex, or national origin under Executive Order 11246 as Amended;
- g. Display posters which summarize the Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay and disability;
- h. Prohibit discrimination based on disability under the Americans with Disabilities Act of 1990;
- i. Assure that all buildings assigned for public use be designed, constructed and altered so as to be accessible to and usable by persons with physical disabilities under the Architectural Barriers Act of 1968; and
- j. Avoid maintaining or providing any segregated facilities.

Any and all contractors, subcontractors, independent contractors, suppliers, facilitators or any person participating in any program or activity receiving federal financial assistance shall:

- a) Comply with the provisions for the elimination of Lead- Based paint hazards under 24 CFR Part 35;
- b) Take all necessary precautions to guard against damages to property and injury to persons.

## SECTION 2 – EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

### NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more)

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 and 41 CFR 60) 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 Equal Opportunity Construction Contractor Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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.

The contractor will work with the awarding agency and the Federal Government in carrying out EEO obligations and in their review of his or her activities under the contract.

The contractor will accept as his 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 for on-the-job training."

### EEO OFFICER

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

### 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 minority employees.

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

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.

### RECRUITMENT OF EMPLOYEES

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 minority groups in the area from which the project work force would normally be derived.

The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor

will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

## 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 notify all potential subcontractors and suppliers of his or her EEO obligations under this contract.

Disadvantaged business enterprises (DBE) as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees.

The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

## EEO 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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives. The records kept by the contractor shall document the following:

- a) The number of minority and non-minority group members and women employed in each work classification on the project; The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
- b) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
- c) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

## NONSEGREGATED FACILITIES

Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.

By the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, all parties certify that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The contractor agrees that a breach of this certification is a violation of the EEO provisions of this contract. The contractor further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

As used in this certification, the term "segregated facilities" refers to facilities provided for employees which are segregated by explicit directive, or on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override, (e.g. disabled parking).

The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

## FALSIFICATION OF DOCUMENTS

The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.



The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the awarding agency or the DOL, 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 awarding agency, HUD or DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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 of debarment action pursuant to 29 CFR 5.12.

## SECTION 3

The purpose of Section 3 requires that recipients of HUD funds and their contractors and subcontractors provide jobs and other economic opportunities to low-income persons. The CDBG project service area for Section 3 compliance will be the nonmetropolitan county.

Contractors and subcontractors participating in federally-assisted projects are required to track and report their activity relative to the hiring and training of low and moderate income persons and the use of local businesses owned by low-income persons. This information must be reported by all contractors and subcontractors prior to project completion utilizing the "Section 3: Economic Opportunities for Low and Very Low Income Persons" form.

All Section 3 covered contracts shall include the following Section 3 clause:

"The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The parties to this contract agree to comply with this Section and certify that they are under no contractual or other impediment that would prevent them from complying with these regulations. The contractor agrees to notify each labor organization or representative workers with which the contractor has a collective bargaining agreement of the contractor's commitments under this Section 3 clause and include this clause in every subcontract subject to compliance with the Section 3 regulations. The contractor will certify that any vacant employment positions, including training positions, that are filled after the contractor is selected but before the contract is executed with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under this section of the Code of Federal Regulations. Noncompliance with HUD's regulations in this Part may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts."

## OFFICE OF FEDERAL CONTRACT COMPLIANCE (OFCCP)

For federally assisted construction contracts, the OFCCP administers and enforces Executive Order 11246, as amended. This Order prohibits discrimination and requires affirmative action to ensure equal employment opportunity without regard to race, color, sex, religion and/or national origin; and the implementing regulations at 41 CFR Parts 60-1 through 60-50. Generally, all contractors and subcontractors holding non-exempt federally assisted construction contracts and subcontracts exceeding \$10,000 must comply with Executive Order 11246.

A "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" (Executive Order 11246) is to be included in the bid solicitations for all federally assisted construction contracts and subcontracts in excess of \$10,000. The Notice, which is published at 41 CFR 60-4.2, informs the contractor bidder of the affirmative action requirements imposed under Executive Order 11246, including the specified goals for minority and female participation. Covered federally assisted construction contracts and subcontracts must incorporate the equal opportunity clause found at 41 CFR 60-1.4 (b).

The equal opportunity clause may be expressly included in each contract or subcontract or incorporated by reference. Importantly, the equal opportunity clauses are deemed to be a part of every covered construction contract and subcontract even if they are not physically incorporated in the contract documents.

In addition to the equal opportunity clauses, federally assisted construction contracts and subcontracts in excess of \$10,000 must include the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" which are found at 41 CFR 60-4.3. The specifications describe the affirmative action obligations and set forth the specific affirmative action steps the construction contractor must implement in order to make a good faith effort to achieve the goals for minority and female participation that were listed in the bid solicitation.

Additional information regarding OFCCP Compliance may be found at [www.dol.gov/esa/OFCCP](http://www.dol.gov/esa/OFCCP) or, at 1-800-397-6251. The Indiana office is located at 46 East Ohio Street, Suite 419, Indianapolis, IN 46204 and phone number is 317-226-5860.

## SECTION 3 – ENVIRONMENT

### CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(2 CFR 200.326. Applicable to all Federally assisted construction contracts and to all related subcontracts of \$150,000 or more.)

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

That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

That the firm shall promptly notify the awarding agency of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

That the firm agrees to include or cause to be included the requirements of this Section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

### PROCUREMENT OF RECOVERED MATERIALS

2 CFR 200.322. State agencies and agencies of a political subdivision of a state that are using assistance under a Program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Please refer to [www.epa.gov/osw/conserve/tools/cpg/pdf/rcra-6002.pdf](http://www.epa.gov/osw/conserve/tools/cpg/pdf/rcra-6002.pdf) for complete text and requirements of Section 6002.

### ENERGY EFFICIENCY

The Contractor agrees to comply with 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 (P.L. 94-163).

The Contractor agrees to include the above paragraph in each third party subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## SECTION 4 – FEDERAL LABOR STANDARDS PROVISIONS (HUD FORM 4010)

### APPLICABILITY

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

### PROVISIONS



## MINIMUM WAGES

**A. 1. (i) Minimum Wages.** 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 I(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 29 CFR 5.5(a)(1)(iv); 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 29 CFR 5.5(a)(1)(ii) 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.

**(ii) (a)** Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and
- (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, 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.

**(iii)** 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.

**(iv)** 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

## WITHHOLDING

**2. Withholding.** HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

## PAYROLLS AND BASIC RECORDS

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. 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 HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, 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 subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) 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:

- (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
- (2) 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 29 CFR Part 3;
- (3) 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.

(c) 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 subparagraph A.3.(ii)(b).

(d) 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.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, 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.

## APPRENTICES AND TRAINEES

### 4. Apprentices and Trainees.

(i) **Apprentices.** 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.

(ii) **Trainees.** 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 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.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### *COPELAND ANTI-KICKBACK ACT*

2 CFR 200.326

**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

#### *SUBCONTRACTS*

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses 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 this paragraph.

#### *CONTRACT TERMINATION; DEBARMENT*

2 CFR 200.213 & 2 CFR 200.326

**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.

#### *COMPLIANCE WITH DAVIS BACON ACT AND RELATED ACT REQUIREMENTS*

**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.

#### *DISPUTES CONCERNING LABOR STANDARDS*

**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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

#### *CERTIFICATION OF ELIGIBILITY*

**10. (i) Certification of Eligibility.** 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

#### *COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES*

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

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

2 CFR 200.326

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. 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 the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph, 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 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

## HEALTH AND SAFETY

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



## IV. SOLICITATION DOCUMENTS

The following sections contain documents to be included in the bid or proposal solicitation.

### DAVIS BACON ACT

#### The Davis Bacon Act

In Construction contracts involving an excess of \$2000, unless exclusively in connection with the demolition or rehabilitation of residential property containing fewer than 8 units, the Contractor shall pay and the Subrecipient shall cause its contractor to pay all laborers and mechanics at a rate not less than those determined by the Secretary of Labor to be prevailing for Boulder County, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or County requirement mandating higher wage rates. The contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7, which enforce statutory labor standards provisions.

#### Project Wage Decision

Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g. heavy, highway) and apply specifically to Boulder County areas. The wage decisions are modified from time to time. For the latest wage decision rates, go to the US DOL wage decision website:

[Davis-Bacon Labor Standards Guide – \(Click to follow the link\)](#)

It is the responsibility of the sub-grantee to provide the proper wage decision and the administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements.

It is the responsibility of the contractor (prime or general contractor) to ensure full compliance of all employers (the contractor, subcontractors and any lower tier subcontractors) with the labor standards provisions applicable to the project.

If additional wage classifications are needed for this job and are not shown on the applicable wage decision, call the contract administrator for help with requesting an additional classification to be added/ approved.

### **ATTACH WAGE DECISION TO THE END OF THIS CONTRACT ADDENDUM**

NOTE: Sub-grantee or their engineers should monitor <http://wdol.gov> while the bid remains open to ensure that the wage determination hasn't changed. If the wage determination changes more than **10 days before** the bid opening date, the solicitation will need to be modified to reflect the new wage rate. The wage determination is valid for 90 days after bid opening. If the contract is not awarded within 90 days, the wage determination must be updated with any changes that have occurred during that period. If the contract is awarded within 90 days, the original wage determination becomes fixed for the life of the contract.

## SECTION 3 CLAUSE

### SECTION 3 CLAUSE (24 CFR Part 135.38)

*All section 3 covered contracts and subcontracts shall include the following clause (referred to as the Section 3 clause):*

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section.

The contractor agrees to submit, and shall cause its subcontractors to submit, monthly reports detailing the number or new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low and very-low income persons, particularly person who are recipients of HUD assistance for housing.



## SECTION 3 DEFINITIONS

### **"SECTION 3 RESIDENT" MEANS:**

1. A public housing resident who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended and who is considered to be a low-to very low-income person; or
2. An individual who resides in the metropolitan area or Non-metropolitan County in which the Section 3 covered assistance is expended and who is considered to be a low-to very low-income person.

### **"NEW HIRE" MEANS:**

A person who is not on the contractor's payroll at the time of selection for the Section 3 award.

## SECTION 3 BUSINESS DEFINED

A Section 3 Business concern is a business:

1. That is 51 % or more owned by a Section 3 Boulder County resident(s); or
2. Whose permanent, full-time employees include persons, at least 30 % of whom are currently Section 3 residents or within three years of the date of first employment with the business concern were Section 3 Boulder County residents; or
3. That provide evidence of a commitment to subcontract in excess of 25 % of the total dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) or (2) above.

*A person seeking the training or employment preference; or a business seeking the preference provided by Section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for that preference.*

## V. REQUIRED BID/PROPOSAL FORMS

***The following sections contain forms the Contractor must complete and submit with the bid or proposal.***

## PRIME CONTRACTOR'S MBE/WBE & LABOR SURPLUS AREA OUTREACH FORM

NOTICE: Must be completed and submitted WITH the bid or proposal

*The prime contractor, if subcontracts are to be let, is required to take the following affirmative steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority business firms, women's business enterprises, and labor surplus area firms. 2 CFR 200.321*

- (1) Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;
- (4) Establish delivery schedules when the requirements of the work permit, which will encourage participation by small and minority-owned businesses and women-owned business enterprises;
- (5) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency Department of Commerce; and
- (6) Require the subcontractor, if further subcontracts are to be let, to take the affirmative steps in paragraphs (1) through (5).

Contractor should clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MBE/WBE firms, the efforts to contact them, and other efforts to meet the above requirements.

Firm	Date	Notes
Downloaded Diverse Business Directory and reached out to MBE/WBE/SBE's using email/fax and phone calls.	03/03/2020	

The links below are to be used to solicit qualified small and minority business and women's business enterprises in the state of Colorado:

- [Diverse Business Directory](#) (Click to follow the link)
- [Colorado Unified Certification Program \(UCP\) Directory](#) (Click to follow the link)
- Request Colorado Office of Economic Development and International Trade (OEDIT) to post the solicitation: [oedit.info@state.or.us](mailto:oedit.info@state.or.us)

The U.S. Department of Labor maintains a current list of Labor Surplus Areas. *The 2017 Labor Surplus Areas (LSA) list produced by the U.S. Department of Labor does not include any LSAs within or near Boulder County, the nearest Colorado LSA is approximately 190 miles away. LSAs in Colorado include: Castilla County, Fremont County, Huerfano County, Rio Grande County, Saguache County, and City of Pueblo. (effective date of LSA list: 10/1/2016 – 9/30/2017). The best resource for outreach to these LSAs is through OEDIT since this organization maintains region-specific business resources.*

NOTE: The above links are not meant to be comprehensive. Contractors are encourage to use other available sources.

**FORM OF STATEMENT OF BIDDER'S QUALIFICATIONS**  
**NOTICE: Must be completed and submitted WITH the bid or proposal**

All questions must be answered. The data given must be clear and comprehensive. This statement must be notarized.

1. Name of Bidder: Asphalt Specialties Company, Inc.
2. Business Address: 10100 Dallas Street - Henderson, CO 80640
3. When Organized: 02/27/1992
4. Bidder is a (an): Corporation  
(Individual - Partnership - Corporation)

The full name and addresses of all persons interested in this proposal as partners and/or principal(s) are: If business is carried out in any other name(s) than that of the principal(s) or partner(s), also state such name(s) and address(es).

Daniel W. Hunt - President/10100 Dallas Street - Henderson, CO 80640

Lawrence M. Olson - Vice President/10100 Dallas Street - Henderson, CO 80640

**CORPORATION**

Corporation is incorporated in the State of: Colorado

President is: Daniel W. Hunt

Treasurer is: Elizabeth Claflin

Place of Business: 10100 Dallas Street - Henderson, CO 80640

5. How many years have you been engaged in the contracting business under your present firm or trading name? 28 years
6. Financial Statement: (Attach Separate Sheet) **"Financial Statement Enclosed in Seperate Envelope"**
7. Credit Available for this Contract \$ 2.5 Million
8. Contracts Now on Hand, Gross Amounts \$ 2.5 Million
9. Have you ever refused to sign a contract at your original bid?  
No
10. Have you ever defaulted on a contract?  
No

FORM OF STATEMENT OF BIDDER'S QUALIFICATIONS  
NOTICE: Must be completed and submitted WITH the bid or proposal

11. Remarks:

13. The undersigned hereby authorizes and requests any person to furnish any information requested by \_\_\_\_\_ in verification of the recitals comprising this Statement of Bidder's Qualifications.

Date at Henderson, CO this 20th day of March, 2020.

Asphalt Specialties Company, Inc.

(Name of Bidder)

By: [Signature]

Daniel W. Hunt - President

STATE OF Colorado

COUNTY OF Adams

Daniel W. Hunt, being duly sworn, deposes and says that they  
are President of Asphalt Specialties Company, Inc. and their answers to the

foregoing questions and all statements therein contained are true and correct.

Asphalt Specialties Company, Inc.

(Name of Bidder)

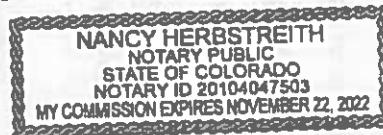
Sworn to before me this: 20th

Day of March, 2020

[Signature]  
Nancy Herbstreith NOTARY PUBLIC

My commission expires: 11/22/2022

Title: Project Administrator/Notary



# WAGE/FRINGE BENEFIT CERTIFICATION FORM

NOTICE: Must be completed and submitted WITH the construction bid proposal (over \$2,000)

Labor Standards Section

Form 6

## Wage/Fringe Benefit Certification

(To be completed by contractor/subcontractors prior to contract award.)

GRANTEE: CRUMH PROJECT: 20H0W7-01

This is to certify that Asphalt Specialties Company, Inc plans to use the following classifications of workers on this above referenced project

Classification	From Applicable Wage Decision			Total Package Due	Base Wage to be paid by Contractor	Fringe Benefits to be provided by Contractor		Total Package to be paid by Contractor
	Base Wage Due	Fringe Benefits Due				Benefit	Hourly Amount	
Flagger/Traffic Control	9.55	3.05	12.60		14.25		VANAS	14.25
Setts	12.43	3.22	15.65		17.75		VANAS	17.75
Roller	23.01	4.22	32.23		25.63		VANAS	25.63
Power	24.19	6.58	30.77		29.63		VANAS	29.63
Laydown	22.67	8.25	30.92		29.63			29.63
Spreader	22.67	8.72	31.39		22.50			22.50
Subcontractor	15.37	4.28	19.65		20.50			20.50
Grader/blade	22.67	8.72	31.39		36.38			36.38
Motor mill	16.22	4.41	20.63		26.55			26.55
Scrubber	22.67	8.72	31.39		28.70			28.70

Certified by: Daniel W. Hunt - President Date: 03/23/2020

(Subject to be certified by Owner or Chief Financial Officer)

Asphalt Roller 16.29 / 4.25 20.54 VANAS 22.25  
 loader 22.67 / 8.72 31.39 VANAS 24.88

**HUD FORM 4230A – REPORT OF ADDITIONAL CLASSIFICATION AND RATE**  
**NOTICE: Due by Contractor PRIOR TO Contract Execution (applicable to Davis Bacon only)**  
**Contractor to complete Sections 8-10.**

<b>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REPORT OF ADDITIONAL CLASSIFICATION AND RATE</b>		<b>HUD FORM 4230A</b> <small>OMB Approval Number 2501-0011 (Exp. 01/31/2010)</small>						
1. FROM (name and address of requesting agency) Colorado Department of Local Affairs	2. PROJECT NAME AND NUMBER							
	3. LOCATION OF PROJECT (City, County and State)							
4. BRIEF DESCRIPTION OF PROJECT	5. CHARACTER OF CONSTRUCTION <input type="checkbox"/> Building <input type="checkbox"/> Residential <input type="checkbox"/> Heavy <input type="checkbox"/> Other (specify) <input type="checkbox"/> Highway							
6. WAGE DECISION NO. (include modification number, if any)  <input type="checkbox"/> COPY ATTACHED		7. WAGE DECISION EFFECTIVE DATE						
8. WORK CLASSIFICATION(S)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center; padding: 5px;">HOURLY WAGE RATES</th> </tr> <tr> <th style="width: 50%; text-align: center; padding: 5px;">BASIC WAGE</th> <th style="width: 50%; text-align: center; padding: 5px;">FRINGE BENEFIT(S) (if any)</th> </tr> <tr> <td style="height: 100px;"></td> <td></td> </tr> </table>		HOURLY WAGE RATES		BASIC WAGE	FRINGE BENEFIT(S) (if any)		
HOURLY WAGE RATES								
BASIC WAGE	FRINGE BENEFIT(S) (if any)							
9. PRIME CONTRACTOR (name, address)	10. SUBCONTRACTOR/EMPLOYER, IF APPLICABLE (name, address)							
<p><b>Check All That Apply:</b></p> <p><input type="checkbox"/> The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.</p> <p><input type="checkbox"/> The proposed classification is utilized in the area by the construction industry.</p> <p><input type="checkbox"/> The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.</p> <p><input type="checkbox"/> The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).</p> <p><input type="checkbox"/> Supporting documentation attached, including applicable wage decision.</p> <p><b>Check One:</b></p> <p><input type="checkbox"/> Approved, meets all criteria. DOL confirmation requested.</p> <p><input type="checkbox"/> One or more classifications fail to meet all criteria as explained in agency referral. DOL decision requested.</p>								
Agency Representative _____ Date _____ <small>(Typed name and signature)</small>  Phone Number _____		<b>FOR HUD USE ONLY LR2000:</b>  Log in:  Log Out:						



## Report of Additional Classification and Wage Rate

U.S. Department of Housing and Urban Development Office of Labor Relations  
(Exp. 09/30/2006)

OMB Approval No. 2501-0011

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The information is considered non-sensitive and does not require special protection. This information is required to obtain benefits. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Employers engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged on the construction work. On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. This information collection facilitates the addition of needed work classifications and wage rates for the construction work involved. This form is used by HUD and local agencies administering HUD programs to report employer request(s) for additional classification and wage rates so that an appropriate wage rate can be approved by the Department of Labor for the construction work. This information collection is required by Department of Labor regulations at 29 CFR 5.5. While no assurances of confidentiality are pledged to respondents, HUD generally discloses these data only in response to a Freedom of Information request.

### Instructions:

#### General:

Contractors/Employers: Do not need to complete this form. Submit a written, signed request to the responsible contracting agency naming the work classifications and the wage rates, including any fringe benefits that are proposed.

Local Agency Staff: Complete items 2 through 10. Submit one copy of this form to the DOLA CDBG Program Coordinator with a copy of the applicable Davis-Bacon wage decision and the written request from the employer naming the work classifications and wage rates that are proposed. (The employer's request must be made in writing and must be signed.)

1. For HUD or State CDBG Office use. Enter the name and address of HUD Office (or State CDBG office) submitting the report and to which the DOL reply should be sent.
2. Enter the name and number of the project or contract involved.
3. Enter the location of the project involved: city, county and state.
4. Describe the construction involved, e.g., new construction or rehabilitation, number and type of buildings, number of stories, number of units (as applicable). For example, New construction: 3 - 4-story buildings; 120 units.
5. Enter the character of construction as defined by DOL for Davis-Bacon prevailing wage rate purposes.
6. Enter the number of the Davis-Bacon wage decision applicable to the construction work. Include the number of wage decision modifications (if any) applicable to the work.
7. Enter the effective date of the wage decision for the project. (See DOL regulations at 29 CFR 1.6.)
8. Enter the work classifications and corresponding hourly basic wage rates and fringe benefit rates (if any) requested.
9. Self-explanatory.
10. If the requesting employer is not the prime contractor, enter the name and address of the subcontractor/employer making the request.

#### Remainder of Form: HUD Labor Relations/State CDBG use.

HUD Labor Relations/State CDBG Staff: Evaluate the employer's request against the criteria for approval (see DOL Regulations, 29 CFR Part 5, and related contract labor standards provisions). The criteria are reflected in "checklist" form to ensure that each factor is considered and to ensure that supporting documentation, including a copy of the applicable wage decision, is attached. Check the box next to each criterion that is met; do not check the box next to any criterion that is not met.

If the request meets all criteria, check the appropriate box, enter the name and telephone number of the HUD/State CDBG agency representative, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision and the written request from the employer involved.

If the request fails to pass all criteria, check the appropriate box, enter agency contact information, and sign and date the form. Submit one copy of the completed form to the DOL with a copy of the applicable Davis-Bacon wage decision, the written request from the employer involved, and a cover letter explaining how the employer's request failed to meet one or more of the criteria.

#### Submission of Report

Completed forms shall be sent to: Branch of Construction

## BID BOND

KNOW ALL MEN BY THESE PRESENTS, that Asphalt Specialties Co., Inc. \* as Principal, and \*\* as Surety, are hereby held and firmly bound unto the Town of Lyons, Colorado (hereinafter called the "Owner") in the penal sum of Five Percent of Amount Bid----- Dollars  
(Written)

(\$ 5%-----), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly to these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying Bid dated March 20th, 20 20 for the:

### ROADWAY REPAIRS - FLOOD RECOVERY

as set out in the accompanying Bid.

WHEREAS, the Town as required as a condition for receiving said Bid that the principal deposit with the Owner either a certified check equivalent to not less than five percent (5%) of the amount of said Bid or in lieu thereof furnish a Bid Bond for said amount conditioned such that in the event of failure to execute the proposed Contract for such construction if the Contract is to be awarded to him, that said sum be paid immediately to the Town as liquidated damages and not as a penalty for the principal's failure to perform.

NOW THEREFORE, if the principal shall, within the period specified therefore:

- A. On the attached prescribed forms presented to him for signature, enter into a written Contract with the Town in accordance with his Bid as accepted, and give a Performance Bond with good and sufficient sureties, as may be required upon the forms prescribed by the Owner for the faithful performance and the proper fulfillment of said Contract, or
- B. Withdraw said Bid within the time specified, or
- C. Pay to the Town the sum determined upon herein as liquidated damages, and not as a penalty, then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

TN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this 16th day of March, 20 20 the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing board.

Principal: Asphalt Specialties Co., Inc.

Address: 10100 Dallas Street, Henderson, CO 80640

BY: [Signature]  
Daniel W. Hunt - President

ATTEST:

By: [Signature]  
Elizabeth Claflin - Secretary  
Surety: Great American Insurance Company

Address: 301 E. Fourth Street, Cincinnati, OH 45202

BY: [Signature]  
Sarah C. Brown, Attorney-In-Fact (Continues on Next Sheet)

\*Incorporated in the State of Colorado

\*\*Great American Insurance Company, Incorporated in the State of Ohio



#### **INSTRUCTIONS**

- 1.1 The full firm name and residence of each individual party to the bond must be inserted in the first paragraph.
- 1.2 If the principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are partners composing the partnership (to be named), and all partners must execute the bond as individuals.
- 1.3 The state of incorporation of each corporate party to the bond must be inserted in the first paragraph and the bond must be executed under the corporate seal of said party attested by its secretary or other authorized officer.
- 1.4 Power of Attorney must accompany this bond when signed by other than an officer of either the principal or surety.
- 1.5 A standard printed bond form may be used in lieu of the foregoing form provided that the security stipulations protecting the Town are not in any way reduced by use of such standard printed bond form.

# GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-389-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than SEVEN

No. 0 14957

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
DON APPELBY	ALL OF	ALL
TODD D. BENGFORDE	GREENWOOD VILLAGE, COLORADO	\$100,000,000
FLORIETTA ACOSTA		
SARAH C. BROWN		

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.  
IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 22ND day of APRIL 2019



*Atty L C. B.*  
Assistant Secretary

GREAT AMERICAN INSURANCE COMPANY  
*Mark V. Vicario*  
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 22ND day of APRIL, 2019, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

MARK VICARIO (877-377-2405)



Susan A. Kohorst  
Notary Public, State of Ohio  
My Commission Expires 06-16-2020

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company; to be valid and binding upon the Company with the same force and effect as though manually affixed.

## CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 16th day of March, 2020



*Atty L C. B.*  
Assistant Secretary

**CERTIFICATE OF CORPORATE PRINCIPAL**

**NOTICE: Must be completed and submitted WITH the bid or proposal**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor herein; that \_\_\_\_\_ who signed this Agreement on behalf of the Contractor, was then \_\_\_\_\_ of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate  
Seal

\_\_\_\_\_  
(Corporate Secretary)

## CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NOTICE: Must be completed and submitted **WITH** the bid or proposal

### INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) days after bid opening. No contract shall be awarded unless such report is submitted.

### CERTIFICATION BY BIDDER

Asphalt Specialties Company, Inc./10100 Dallas Street - Henderson, CO 80640

NAME AND ADDRESS OF BIDDER (Include ZIP Code)

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

Yes ☒ No ☐

2. Compliance reports were required to be filed in connection with such contract or subcontract.

Yes ☒ No ☐

3. Bidder has filed all compliance reports due under applicable instructions.


Yes ☒ No ☐ None Required ☐

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

Yes ☐ No ☒

Daniel W. Hunt - President

Name and Title of Signer (Please type)

  
Signature

03/20/2020

Date

**CERTIFICATION OF BIDDER REGARDING FEDERAL LABOR STANDARDS AND DAVIS-BACON ACT**

**NOTICE: Must be completed and submitted WITH the construction bid or proposal**

**Asphalt Specialties Company, Inc.**

**Roadway Repairs - Flood Recovery/20-RDWY-01**

Name of Prime Contractor

Project Name and Number

**Bidder:**

This certification is required to insure that the proposed Bidder understands that the Project or program to which the construction work covered by any construction greater than \$2,000, is being assigned by the United States of America and that the various Federal Labor Standards Provisions, summarized in the Form HUD-4010, "Federal Labor Standards Provisions" are included in any such contract, pursuant to the provisions applicable to such Federal assistance. Nothing, however, shall prohibit the payment of more than the prevailing wage rate to any construction worker employed on the construction project.

**Wage Determination:**

Federal prevailing wage rates for construction labor can be obtained from the Wage Determination Online system:

<http://www.wdol.gov/>

**Wage Determination Posting:**

Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily place at the site of the work, or at such places as are used by them to pay workers.

The undersigned is required to ensure that all specifications and/or contracts include all applicable Federal wage rate determination and the required labor standards provisions summarized by Form HUD-4010, "Federal Labor Standards Provisions."

**Weekly Certified Payrolls:**

It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>)

**Asphalt Specialties Company, Inc./10100 Dallas Street - Henderson, CO 80640**

Name and Address of Bidder (include ZIP code):

**Daniel W. Hunt - President**

Name and Title of Signer (Print or Type)



Signature

**03/20/2020**

Date



**CERTIFICATION OF CONTRACTOR/SUBCONTRACTOR REGARDING SECTION 3 AND SEGREGATED FACILITIES**

**NOTICE: Must be completed and submitted WITH the bid or proposal (over \$100,000)**

**Asphalt Specialties Company, Inc.**

**Roadway Repairs - Flood Recovery/20RDWY-01**

**Name of Contractor or Sub-Contractor**


**Project Name and IFB Number**

**The undersigned hereby certifies that:**

- (a) Section 3 provisions are included in the Contract if this is a Section 3 project.
- (b) The above state company is a signatory to the Contractor's Section 3 Plan.
- (c) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

**Daniel W. Hunt - President**

**Name and Title of Signer (Type of Print)**

**Signature** 

**03/20/2020**

**Date**

**CERTIFICATIONS OF BIDDER REGARDING CIVIL RIGHTS**  
**NOTICE: Must be completed and submitted WITH the bid or proposal**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further, agrees to abide by the:

**Civil Rights Act of 1964, Title VI**, as amended, that provides no person on the basis of Race, Color, or National Origin shall be excluded from participation, denied program benefits, or subjected to discrimination.

**And, Civil Rights Act of 1968, Title VIII**, as amended, will not discriminate in housing on the basis of Race, Color, Religion, Sex, or National Origin.

**And, Rehabilitation Act of 1973, Section 504**, as amended, that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation and/or employment, denied program benefits, subjected to discrimination under any program receiving federal funds;

**And, Housing and Community Development Act of 1974, Section 109**, as amended, that no person shall be excluded from participation (including employment), denied program benefits, or subjected to discrimination on the basis of Race, Color, National Origin, Sex, Age, and Handicap under any program or activity funded in whole or part under Title I (CDBG) of the Act. **And, Age Discrimination Act of 1975**, as amended, that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

**And, Americans with Disabilities Act of 1990**, as amended, that there shall be no employment discrimination against "qualified individuals with disabilities."

**And, Executive Order 11063**, that no person shall, on the basis of race, color, religion, sex, or national origin, be discriminated against in housing and related facilities provided with federal assistance, or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

**And, Executive Order 11246**, as amended, that no person shall be discriminated against, on the basis of race, color, religion, sex, or national origin, in any phase of employment during the performance of federal or federally assisted construction contracts in excess of \$10,000.

**EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of the contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, familial status, religious affiliation or handicap. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, national origin, familial status, religious affiliation or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this non-discrimination clause.
2. The CONTRACTOR will, in all solicitation or advertisements for employees placed by or on behalf of the CONTRACTOR for the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, creed, sex, color, national origin, familial status, religious affiliation or handicap. 3. The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
3. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the GRANTEE's Department of Housing and/or Community Development and the Secretary of Labor

for purposes of investigation to ascertain compliance with such rules, regulations and orders.

4. In the event of the CONTRACTOR's non-compliance with any provision of this contract or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
5. The CONTRACTOR will include the provisions of the subparagraphs 12 (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the GRANTEE's Department of Housing and/or Community Development may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the GRANTEE's Department of Housing and/or Community Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS – SECTION 503**  
(IF CONTRACT IS \$25,000 OR OVER)

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The CONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act. 3. In the event of the CONTRACTOR's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
4. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
5. The CONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
6. The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

**ACCESS TO RECORDS AND RECORDS RETENTION**

The undersigned certifies, to the best of his or her knowledge and belief that:

1. The individual, sole proprietor, partnership, corporation, and/or association agrees to permit Boulder County Collaborative, State of Colorado, U. S. Department of Housing and Urban Development (HUD), and the Office of the Inspector General and/or their designated representatives to have access to all records for review, monitoring, and audit during normal

working hours.

2. The individual, sole proprietor, partnership, corporation, and/or association agrees to retain all records for at least five years following the closeout date or the resolution of all audit findings, whichever is later.

**CONFLICT OF INTEREST**

The undersigned is fully aware that this contract is wholly or partially federally funded, and further, by submission of the bid or proposal that the individual or firm, certifies that:

1. There is no substantial interest, as defined by Colorado Statutes, with any public official, employee, agency, commission, or committee with the Boulder County Collaborative.
2. Any substantial interest, as defined by Colorado Statutes, with any public official, employee, agency, commission, or committee (including members of their immediate family) with Boulder County Collaborative that develops at any time during this contract will be immediately disclosed to Boulder County Collaborative.

**ANTI-LOBBYING CERTIFICATION**

The undersigned certifies, to the best of his or her knowledge and belief that:

1. 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 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.
2. 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 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.
3. The undersigned shall require that the language of this Certification be included in the award documents for all sub-awards to all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

**CERTIFICATIONS SIGNATURE FORM**

*Return this form with proposal.*

These Certifications (Civil Rights, Equal Employment Opportunity, Affirmative Action for Handicapped Workers – Section 503, Access to Records and Records Retention, Conflict of Interest, Lobbying) are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of these Certifications is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

**Daniel W. Hunt**

(Typed name of official)



(Signature of Official)

**Asphalt Specialties Company, Inc. 03/20/2020**

(Typed name of entity)

(Date)

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

NOTICE: Must be completed and submitted WITH the bid or proposal

State of Colorado

County of Adams ss.

Daniel W. Hunt, being first duly sworn, deposes and says that:

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

  
(Signed)

Daniel W. Hunt - President

(Name & Title)

Subscribed and sworn to before me

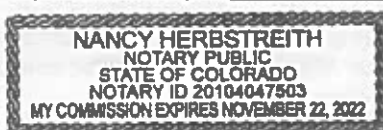
this 20th day of March, 2020



Nancy Herbstreith

(Notary Public)

My commission expires 11/22/2022



### SECTION 3 REQUIREMENTS

**NOTICE:** *Must be completed and submitted WITH the bid or proposal (over \$100,000)*

Boulder County Collaborative is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of Section 3 businesses and the hiring of low income residents of the community for projects or programs using or assisted with HUD funding, as applicable.

#### HUD Funded Contracts in excess of \$100,000

All applicable bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

Boulder County Collaborative shall require each contractor on all HUD funded public or residential construction jobs exceeding \$100,000, to prepare a written Section 3 plan as a part of their bids. All Section 3 plans shall be reviewed and approved by Boulder County Collaborative and retained according to the Records Retention Plan.

CONTRACTOR/SUBCONTRACTOR'S SECTION 3 PLAN

(Required if contract exceeds \$100,000)

NOTICE: Must be completed and submitted WITH the bid or proposal

Asphalt Specialties Company, Inc. agrees to implement the following specific affirmative action steps

(Name of contractor/Subcontractor)

directed at increasing the utilization of lower income residents and businesses within the City/Town of Boulder County.

- A. The boundaries of the Section 3 covered project area is Boulder County, Colorado and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the County the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as State Employment Service and or Workforce Boulder County.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 Plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 Plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts, which are typically let on a negotiated rather than a bid basis, in areas other than Section 3 covered project areas, are also let on a negotiated basis whenever feasible, if let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors, and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriate project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc. which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 Plan.
- J. To list on Table A information related to subcontracts to be awarded.
- K. To list on Table B all projected workforce needs for all phases of this project by occupation, trade, skill level, and number of positions.

As officers and representatives of Asphalt Specialties Company, Inc., we the undersigned have read

(Name of Contractor/Subcontractor)

and fully agree to this Section 3 Plan, and become a party to the full implementation of this program.

  
Signature

Daniel W. Hunt - President

Title

  
Signature

Elizabeth Claflin - Secretary

Title

03/20/2020

Date

03/20/2020

Date



**CONTRACTOR/SUBCONTRACTOR'S SECTION 3 TABLES A & B**  
**TABLE A**

**PROPOSED SUBCONTRACTS BREAKDOWN**

NOTICE: Must be completed and submitted WITH the bid or proposal (over \$100,000)

FOR THE PERIOD COVERING \_\_\_\_\_ 20\_\_\_\_ THROUGH \_\_\_\_\_ 20\_\_\_\_  
(Duration of the CDBG-DR-Assisted Project)

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Type Of Contract (Business or Profession)	Total Number of Contracts	Total Approximate Dollar Amount	Estimated Number Of Contracts to Project Area Businesses*	Estimated Dollar Amount to Project Area Businesses*
Concrete	1	150,000.00	0	0.00
Fencing	1	14,239.59	0	0.00
Erosion Control	1	33,136.00	0	0.00
Pipe	1	59,340.00	0	0.00
Striping	1	6,730.00	0	0.00
Survey	1	21,204.00	0	0.00

\*The Project Area is coextensive with the City/Town of: Boulder boundaries.

Asphalt Specialties Company, Inc.

Company

Roadway Repairs - Flood Recovery

Project Name

20-RDWY-01

Project/IFB Number

EEO Officer (Signature)

Lawrence M. Olson - Vice President

03/24/2020

Date

TABLE B

## ESTIMATED PROJECT WORKFORCE BREAKDOWN

NOTICE: Must be completed and submitted WITH the bid or proposal (over \$100,000)

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Job Category	Total Estimated Positions	No. Positions Currently Occupied By Permanent Employees	No. Positions Not Currently Occupied	No. Positions To Be Filled w/LIPAR*
Officers/Supervisors	2	2	1	1
Professionals				
Technicians				
Housing Sales/Rental/Mgmt.				
Office Clerical				
Service Workers				
Others				

TRADE: **Grading/Paving**

Journeyman	12	12		
Apprentices				
Maximum No. Trainees				
Others				

## TRADE:

Journeyman				
Apprentices				
Maximum No. Trainees				
Others				

\*Lower Income Project Area Residents. A Section 3 qualifying person is one whose household resides in Boulder County and whose income does not exceed the income limit for the size of household as per the Section 8 Income Limits for Boulder County.

**Asphalt Specialties Company, Inc.**

Company

## VI. REQUIRED CONTRACT FORMS

***The following sections contain documents the Contractor must complete and submit prior to contract execution.***

**CERTIFICATION OF BIDDER REGARDING SECTION 3**  
**NOTICE: Due by Contractor PRIOR TO Contract Execution (over \$100,000)**

Asphalt Specialties Company, Inc.

Roadway Repairs - Flood Recovery/20-RDWY-01

**Name of Prime Contractor**

**Project Name and Number**

The undersigned hereby certifies that:

- A. The positions listed under Part B that have been filled by Asphalt Specialties Company, Inc.  
(Name of Prime Contractor)

were not filled to circumvent the contractor's obligation to provide employment opportunities, including training positions, for Section 3 residents, as required by Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations, 24 CFR Part 135.

- B. Employment positions filled since 3/31/20  
(Date of Selection)

Employment Positions Filled:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- C. No employment positions have been filled since \_\_\_\_\_  
(Date of Selection)

Daniel W. Hunt - President

**Name and Title of Signer**

  
Signature

03/30/2020

Date

### SECTION 3 CERTIFICATION FOR BUSINESS

NOTICE: Due by Contractor **PRIOR TO** Contract Execution (over \$100,000)

Project Name: Roadway Repairs - Flood Recovery Contract Number: \_\_\_\_\_

Contractor Name: Asphalt Specialties Company, Inc.

It is the policy of the Congress and the purpose of the federal Section 3 policy to ensure that the employment and other economic opportunities generated by federal financial assistance for housing, economic and community development programs shall, to the greatest extent feasible, be directed toward low and very low income persons, particularly those who are the recipients of government assistance for housing.

Does your business qualify as a Section 3 business? ☐ Yes ☒ No


To qualify as a Section 3 business, you must meet one or more of the following three criteria (please check all that apply as per 24 CFR, Subchapter B, Part 135.5):

- ☐ Is owned (51% or more) by Section 3 residents (defined below\*)
- ☐ Employs in permanent, full-time positions, at least 30% persons whom are currently Section 3 residents OR whom were Section 3 residents within three years of the date of first employment with the business
- ☐ Provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to businesses that meet one of the above definitions.

\* Section 3 residents are persons who either live in public housing or are at or below the following income qualifications:  
[https://www.hudexchange.info/resource/reportmanagement/published/HOME\\_IncomeLmts\\_State\\_CO\\_2015.pdf](https://www.hudexchange.info/resource/reportmanagement/published/HOME_IncomeLmts_State_CO_2015.pdf)

COUNTY	Type of Household	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
BOULDER	Low Income	\$46,100	\$52,650	\$59,250	\$65,800	\$71,100	\$76,350	\$81,600	\$86,900

I certify that the above information is accurate, and agree to provide records upon request for verification of my eligibility as a Section 3 business.

  
Signature  
Daniel W. Hunt  
Name (printed)

President  
Title  
03/30/2020  
Date

Bond No. 3332193

PERFORMANCE BOND

NOTICE: Due by Contractor PRIOR TO Contract Execution (over \$100,000)

We, Asphalt Specialties Co., Inc.  
(Name of Contractor or Company)  
contractor under Town of Lyons contract # 20-RDWY-01  
(Name of OWNER) (Contract Number)  
(hereafter "THE CONTRACT") as PRINCIPAL and Great American Insurance Company, as Surety, a  
(Name of Surety)  
corporation organized under the laws of the State of Ohio and authorized to  
(State)  
transact business in the State of Colorado, with an office at 301 E. Fourth Street, Cincinnati, OH 45202  
(Address)  
hereby bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally,  
to the Town of Lyons, Colorado, (OWNER) as Obligee, in the amount of One Million Two \*  
(OWNER) (Contract Amount)  
DOLLARS, in United States currency, for the performance of THE CONTRACT.

WHEREAS, the PRINCIPAL (Contractor) entered into THE CONTRACT with the Town of Lyons  
(OWNER)  
dated \_\_\_\_\_, 20\_\_\_\_, for Project No. 20-RDWY-01 (PW 1078), Lyons, CO  
(Project Name and Location)  
according to the plans and specifications contained in THE CONTRACT, a copy of which is made a part  
hereof;

The conditions of this Performance Bond are that, if the PRINCIPAL (Contractor) fully and faithfully:

- a) completes the work strictly according to the terms of the CONTRACT, and;
- b) for a period of one year after the issuance of the Notice of Project Construction Acceptance or until all warranty work is completed, repairs or replaces where required (or pays the cost thereof) all work performed under the terms of the CONTRACT;

then this bond is null and void. Otherwise, upon written notification from the OWNER, the Surety shall take one of the following actions at the Surety's expense:

1. Arrange for the PRINCIPAL (Contractor), with consent of the OWNER, to perform and complete THE CONTRACT; or
2. Undertake to perform and complete THE CONTRACT itself, through its agents or through independent contractors. (The Surety is then bound by all of the provisions of THE CONTRACT);  
or

\*Hundred Seventy Five Thousand Two Hundred Seventy Seven & 09/100--- (\$1,275,277.09----)

3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of THE CONTRACT, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with a performance bond and a labor and material bond executed by qualified sureties equivalent to the bonds issued on THE CONTRACT, and pay to the OWNER the amount of all damages incurred by the OWNER due to the default of PRINCIPAL (Contractor) including correction of defective work (if any), additional legal, design professional and delay costs, and the cost of completion of THE CONTRACT subject to the amount of this bond. In addition to these conditions, this bond includes, by reference, all applicable provisions stated in § 38-26-106, C.R.S., as amended.

If the Surety does not commence performance of the Work or cause commencement of performance of the work within ten days from the date of the written notification from the OWNER, the OWNER may take over the CONTRACT and, without prejudice to any other remedies, complete the CONTRACT and the PRINCIPAL and Surety are liable to the OWNER for all damages incurred by OWNER due to the default of PRINCIPAL (Contractor) including correction of defective work (if any), additional legal, design professional and delay costs, and the cost of completion of THE CONTRACT subject to the amount of this bond.

THE SURETY, for value received, agrees that no extension of time, change in, addition to, or other modification of the terms of THE CONTRACT or Work to be performed shall in any way affect its obligation on this bond and the Surety hereby waives notice of any such extension of time, change, addition or modifications.

The OWNER shall bring any action against the Surety on this bond no later than two years from the published date of Final Settlement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, ~~XXXXXX~~ 2020

WITNESS

  
Elizabeth Claflin - Secretary

PRINCIPAL Asphalt Specialties Co., Inc.

  
By its President Daniel W. Hunt



WITNESS



SURETY Great American Insurance Company

Attorney-In-Fact \_\_\_\_\_ TITLE

BY:   
Its Attorney-in-fact Sarah C. Brown

**NOTE:** Date of BOND must not be prior to date of Contract. If the Contractor is Partnership, all partners should execute BOND.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.



Bond No. 3332193

PAYMENT BOND

NOTICE: Due by Contractor PRIOR TO Contract Execution (over \$100,000)

Know all people by these presents that:

Asphalt Specialties Co., Inc.

(Name of Contractor or Company)

10100 Dallas Street, Henderson, CO 80640

(Address)

A Corporation hereinafter called PRINCIPAL, and Great American Insurance Company  
(Corporation/Partnership) (Name of Surety Company)

301 East Fourth Street, Henderson, CO 80640

(Address)

hereinafter called SURETY, are held and firmly bound unto

Town of Lyons

(Name of OWNER)

432 5th Avenue, Lyons, CO 80540

(OWNER's Address)

hereinafter called OWNER, in the penal sum of \$ 1,275,277.09---- \*          Dollars in lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, successors, and assigns, jointly and severally, firmly in these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain CONTRACT with the OWNER dated the          day of         , 20        , a copy of which is hereto attached and made a part hereof for the construction of:

PROJECT NAME: Project No. 20-RDWY-01 (PW 1078)

NOW THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, SUB-CONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such CONTRACT, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK whether by SUB-CONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the CONTRACT or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the CONTRACT or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

\*(One Million Two Hundred Seventy Five Thousand Two Hundred Seventy Seven & 09/100----)

IN WITNESS WHEREOF, this instrument is executed in Three (3) counterparts, each one of which shall be deemed an original, and this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**PRINCIPAL:** Asphalt Specialties Co., Inc.

  
(By its President) Daniel W. Hunt

  
Witness as to Principal Elizabeth Claflin  
Secretary



**SURETY:** Great American Insurance Company

**Attorney-In-Fact**  
Title

By   
(Its Attorney-in-fact) Sarah C. Brown

  
Witness as to Surety

**NOTE:** Date of BOND must not be prior to date of CONTRACT. If CONTRACTOR is Partnership, all partners should execute BOND.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

# GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than SEVEN

No. 0 14957

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

	Name	Address	Limit of Power
DON APPLEBY	MARK SWEIGART	ALL OF	ALL
TODD D. BENGFOR	SUSAN J. LATTARULO	GREENWOOD VILLAGE, COLORADO	\$100,000,000
FLORIETTA ACOSTA	ASHLEA McCAUGHEY		
SARAH C. BROWN			

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 22ND day of APRIL 2019

Attest

GREAT AMERICAN INSURANCE COMPANY



*Atty L C. B.*

Assistant Secretary

*Mark V. Vicario*

Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

MARK VICARIO (877-377-2405)

On this 22ND day of APRIL 2019, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



Susan A. Kohorst  
Notary Public, State of Ohio  
My Commission Expires 05-18-2020

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority, and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

## CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this

day of



*Atty L C. B.*

Assistant Secretary

## VII. ADDITIONAL FORMS/DOCUMENTS FOR USE DURING CONTRACT TERM

*The following sections contain documents the Contractor must complete and submit periodically for the life of the Contract.*

### **SUMMARY OF CONTENTS AND SUBMITTAL REQUIREMENTS:**

**1. Certified Payroll Form (WH 347)**

To be turned in for each week of job from each contractor/subcontractor with each pay request. Can use your own payroll documents as long as all information required on this form is included on your own payroll forms. You are required to include page 2 certification statement. If you are using your own payroll format you may attach the certification form the back of the WH-347.

If additional wage classifications are needed for this job and are not shown on the applicable wage decision, call the contract administrator for help with requesting an additional classification to be added/approved.

**2. Payroll Deduction Authorization for "other deductions" on Certified Payroll (Only if applicable)**

**3. Section 3 Monthly Report for Contractor and Subcontractor**

- Contractor and subcontractor are required to submit a Monthly Compliance Form and an Employee Data and Certification form for all new hires.
- Contractor and Subcontractor are required to submit a Notice of termination and job problems related to Section 3 eligible workers.
- Contractor payment requests may be held until all reporting requirements have been met.

**4. Section 3 Employee Data Certification**

**5. Section 3 Posted Notice to Project Residents**

A fillable form is available at the following link: <https://www.dol.gov/whd/forms/wh347.pdf>



NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		CMB No. 1235-0008 Expires 02/28/2018								
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.						
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) DO NOT WRITE IN THESE COLUMNS	(3) WORK CLASSIFICATION	(4) DAY AND DATE		(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK
			HOURS WORKED EACH DAY					FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS	
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**PAYROLL DEDUCTION AUTHORIZATION FORM**  
**"OTHER DEDUCTIONS" ON CERTIFIED PAYROLL**  
*NOTICE: For Davis Bacon Act-Applicable Projects Only*  
*Contractors place this form on Company Letterhead*

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

Employee's Name: \_\_\_\_\_

I, \_\_\_\_\_, hereby authorize \_\_\_\_\_ to  
(Employee Name) (Name of Employer/Company)

deduct \$ \_\_\_\_\_ from my paycheck.

This deduction is for:

_____ Loan Repayment	_____ Retirement	_____ Profit Sharing
_____ Advance	_____ Charitable Donations	
_____ Savings Bonds	_____ Insurance Premiums	
_____ Other: _____		

This deduction is to be made:

\_\_\_\_\_ One time only \_\_\_\_\_ Weekly \_\_\_\_\_ Monthly \_\_\_\_\_ times over \_\_\_\_\_ weeks

\_\_\_\_\_ Other: \_\_\_\_\_

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

You may make payroll deductions as permitted by DOL regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" (i.e. give up or return to the employer) any of their earnings other than those identified.

You need to submit this documentation only one time per employee, unless changes in deductions or durations take place.

**\*If deductions are being made for child support, a copy of the court ordered withholding must be included.**



### SECTION 3 MONTHLY COMPLIANCE REPORT

*NOTICE: For Contracts over \$100,000*

Project Name: \_\_\_\_\_ Contract Number: \_\_\_\_\_

Contractor Name: \_\_\_\_\_ For the Month of: \_\_\_\_\_

#### A. Hiring - Select one:

- ☐ I have not hired any new employees during the month specified.
- ☐ I have hired \_\_\_\_\_ Section 3 employees, and/or \_\_\_\_\_ non-Section 3 employees during the month.

#### B. Recruitment

- ☐ I have taken one or more of the following recruitment steps to hire a Section 3 resident with the highest training and employment priority ranking: (check all that apply)
- ☐ I have made the Regional Workforce Solutions Center, and/or the Regional Workforce website the initial contact for all new hires.
- ☐ I have advertised to fill vacancy (ies) at the site(s), where work is taking place, in connection with this project. Below, I have checked the steps I have taken to find Section 3 low-income residents, from the targeted groups and neighborhoods, to fill any vacancies.
- ☐ Placed signs or posters in prominent places at project site(s).
- ☐ Taken photographs of the above item to document that the above step was carried out.
- ☐ Distributed employment flyers to the administrative office of the local Public Housing Authority.
- ☐ Contacted employment referrals or Youthbuild Program referrals.
- ☐ Kept a log of all applicants and indicated the reasons why Section 3 residents who applied were not hired.
- ☐ Retained copies of any employment applications completed by Public Housing Authority, Section 8 certificate or voucher holders or other Section 3 residents.
- ☐ Sent a notice about Section 3 training and employment requirements and opportunities to labor organizations or to worker representatives with whom our firm has a collective bargaining or other agreement.

#### C. Verification

- ☐ I have attached proof of all checked items.
- ☐ I hereby certify that the above information is a true and correct.

\_\_\_\_\_  
Signature of Authorized Representative of Contractor/Subcontractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## EMPLOYEE DATA CERTIFICATION FORM

*NOTICE: For Contracts over \$100,000*

The U.S. Department of Housing and Urban Development (HUD) requires that Boulder County Collaborative document the income of newly hired persons working on federally-funded construction projects. This form may also be utilized as supportive documentation for **Section 3 Certifications for Business form** and is intended to comply with HUD Community Development Block Grant requirements.

### Section I

Applicant's Name: \_\_\_\_\_ Job Title: \_\_\_\_\_

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

What is your race? (Circle one)

WHITE

BLACK/AFRICAN AMERICAN

ASIAN

AMERICAN INDIAN/ALASKAN NATIVE

NATIVE HAWAIIAN/OTHER PACIFIC ISLANDER

BLACK/AFRICAN AMERICAN & WHITE

ASIAN & WHITE

OTHER MULTIRACIAL

Is your family of Hispanic origin? (Circle one) YES NO

Do you currently reside in Public Housing? If yes, you do not need to fill out the rest of this form.  
(Circle one) YES NO

Have you been unemployed in the last 3 years? If yes, you do not need to fill out the rest of this form.  
(Circle one) YES NO

### Section II

How many people are in your family? (Circle one) 1 2 3 4 5 6 7 8+

What is your family's gross annual income (before taxes)? \_\_\_\_\_

I certify that all of the above information is true and correct to the best of my knowledge.

\_\_\_\_\_  
Employee Signature

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

### SECTION 3 POSTED NOTICE TO PROJECT RESIDENTS

*NOTICE: For Contracts over \$100,000*

The project \_\_\_\_\_ is being funded by the U.S. Department of Housing and Urban Development under the - Disaster Recovery Funding Program. This notice complies with the Boulder County Collaborative Section 3 Plan and is intended to inform the public, in particular project residents, of the economic opportunities (jobs) created through the use of the federal award.

Contractor/subcontractor intends to hire for the following positions:

Number of jobs	Title	Description of Qualifications/Licensure /Certification

#### Section 3 preferences:

1. Persons residing in the project area and who are of low- to very-low-income
2. Participants in HUD Youthbuild
3. Homeless Persons
4. Residents of the local Public Housing Authority
5. Residents of the local Section 8 Housing Assistance Program units

For more information including job applications, apprenticeships, training positions, and qualifications, contact:

Name of Contractor: \_\_\_\_\_

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

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

City, State, Zip: Phone: \_\_\_\_\_

Estimated construction start date: \_\_\_\_\_

**REQUIRED JOBSITE POSTERS**  
*See proceeding pages*

# Equal Employment Opportunity is **THE LAW**

## **Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations**

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

### **DISABILITY**

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

### **AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

### **SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

### **GENETICS**

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

### **RETALIATION**

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

### **WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED**

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).

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## Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### **INDIVIDUALS WITH DISABILITIES**

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

### **DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS**

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

### **RETALIATION**

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov), or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

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## Programs or Activities Receiving Federal Financial Assistance

### **RACE, COLOR, NATIONAL ORIGIN, SEX**

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in Educational programs or activities which receive Federal financial assistance.

### **INDIVIDUALS WITH DISABILITIES**

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of activities employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.


# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

## FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

<b>PREVAILING WAGES</b>	You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.
<b>OVERTIME</b>	You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.
<b>ENFORCEMENT</b>	Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.
<b>APPRENTICES</b>	Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.
<b>PROPER PAY</b>	If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.




For additional information:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**WWW.WAGEHOUR.DOL.GOV**



U.S. Wage and Hour Division

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321(Revised April 2009)



"General Decision Number: C020200007 01/03/2020

Superseded General Decision Number: C020190007

State: Colorado

Construction Type: Highway

County: Boulder County in Colorado.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number      Publication Date  
0                              01/03/2020

\* ENGI0009-011 05/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
(3)- Drill Rig Caisson (smaller than Watson 2500 and similar).....	\$ 28.25	10.70
(4)-Scraper (single bowl, under 40 cu. yd), Crane (50 tons and under).....	\$ 28.40	10.70
(5)-Drill Rig Caisson (Watson 2500 similar or larger), Crane (51-90 tons), Scraper (40 cu.yd and over),.....	\$ 28.57	10.70
(6)-Crane (91-140 tons)....	\$ 29.55	10.70

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SUC02011-002 09/15/2011

	Rates	Fringes
CARPENTER		
Excludes Form Work.....	\$ 16.61	3.88
Form Work Only.....	\$ 17.06	3.90
CEMENT MASON/CONCRETE FINISHER...	\$ 17.39	3.00
ELECTRICIAN.....	\$ 33.39	7.64
FENCE ERECTOR.....	\$ 15.96	3.46
GUARDRAIL INSTALLER.....	\$ 16.21	3.63
HIGHWAY/PARKING LOT STRIPING:Painter.....	\$ 12.62	3.21
IRONWORKER, REINFORCING		

(Excludes Guardrail Installation).....	\$ 16.69	5.45
<b>IRONWORKER, STRUCTURAL</b>		
(Excludes Guardrail Installation).....	\$ 18.22	6.01
<b>LABORER</b>		
Asphalt Raker.....	\$ 16.29	4.25
Asphalt Shovelers.....	\$ 21.21	4.25
Asphalt Spreader.....	\$ 18.58	4.65
Common or General.....	\$ 16.29	4.25
Concrete Saw (Hand Held)....	\$ 16.29	6.14
Landscape and Irrigation....	\$ 12.26	3.16
Mason Tender- Cement/Concrete.....	\$ 16.29	4.25
Pipelayer.....	\$ 16.74	1.89
Traffic Control (Flagger)...	\$ 9.55	3.05
Traffic Control (Sets Up/Moves Barrels, Cones, Installs Signs, Arrow Boards and Place Stationary Flags) (Excludes Flaggers).....	\$ 12.43	3.22
<b>PAINTER (Spray Only).....</b>	<b>\$ 16.99</b>	<b>2.87</b>
<b>POWER EQUIPMENT OPERATOR:</b>		
Asphalt Laydown.....	\$ 22.67	8.25
Asphalt Paver.....	\$ 24.19	6.58
Asphalt Roller.....	\$ 23.01	9.22
Asphalt Spreader.....	\$ 22.67	8.72
Backhoe/Trackhoe.....	\$ 21.70	5.51
Bobcat/Skid Loader.....	\$ 15.37	4.28
Boom.....	\$ 22.67	8.72
Broom/Sweeper.....	\$ 22.83	8.72
Bulldozer.....	\$ 26.90	5.59
Drill.....	\$ 21.42	2.88
Forklift.....	\$ 15.91	4.27
Grader/Blade.....	\$ 22.67	8.72
Guardrail/Post Driver.....	\$ 16.54	4.10
Loader (Front End).....	\$ 22.67	8.72
Mechanic.....	\$ 22.97	8.72
Oiler.....	\$ 22.77	9.22
Roller/Compactor (Dirt and Grade Compaction).....	\$ 22.32	8.72
Rotomill.....	\$ 16.22	4.41
Screed.....	\$ 22.67	8.72
Tractor.....	\$ 13.13	2.95
<b>TRAFFIC SIGNALIZATION:</b>		
Groundsman.....	\$ 18.52	3.59
<b>TRUCK DRIVER</b>		
Distributor.....	\$ 21.69	5.27
Dump Truck.....	\$ 16.41	5.27
Lowboy Truck.....	\$ 17.25	5.27
Multi-Purpose Specialty & Hoisting Truck.....	\$ 16.41	4.97
Pickup and Pilot Car.....	\$ 13.93	3.68
Semi/Trailer Truck.....	\$ 18.39	4.13
Truck Mounted Attenuator....	\$ 12.43	3.22
Water Truck.....	\$ 20.64	5.27

**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other

health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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Lyons Roadway Repairs

## NOTICE OF AWARD

Date: March 31, 2020

To: Asphalt Specialties Company, Inc.  
10100 Dallas Street  
Henderson, CO 80640

RE: Lyons Roadway Repairs Project

As described in the invitation/request #20-RDWY-01

This is to inform you that your company has been selected to receive the award for construction of the above referenced project.

You are hereby requested to provide all required forms, as soon as possible, but no longer than 10 calendar days from receipt of this notice.

Town of Lyons, Colorado, Owner

By:

  
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Town of Lyons