



Town Council
Tuesday, January 9, 2024
Public Meeting Room / Eagle Town Hall
200 Broadway Eagle, CO

*This agenda and the meetings can be viewed at www.Townofeagle.org.
Times listed are approximate and are subject to change.*

TOWN COUNCIL MEETING ACCESS INFORMATION AND PUBLIC PARTICIPATION *This will be an in-person meeting using Teams. Please note: All participants must remain muted until they are requested to speak. This will reduce background noise disruptions to the meeting attendees. When it's your turn to speak, you will have three (3) minutes for public comment. PUBLIC COMMENTS: If you are unable to attend, public comments regarding any items on this agenda can be submitted to Jenny Rakow, Town Clerk, and will be included as part of the record. For technical difficulties, please email jenny.rakow@townofeagle.org and we will do our best to assist you.*

1. This will be an in-person meeting with access via Teams.

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 236 651 740 956

Passcode: Bu3EG2

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 469-770-0416,,711750520#](#) United States, Dallas

Phone Conference ID: 711 750 520#

- **Please note: All participants must remain muted until they are requested to speak. This will reduce background noise disruptions to the meeting attendees.**
- **When it's your turn to speak, you will have three (3) minutes for public comment.**
- **PUBLIC COMMENTS: If you are unable to attend, public comments regarding any items on this agenda can be submitted to Jenny Rakow, Town Clerk, and will be included as part of the record.**
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CALL TO ORDER - 6:00 PM

ROLL CALL

ADOPTION OF AGENDA *Opportunity for amendment or deletions to the agenda.*

PUBLIC COMMENT - 6:05 PM *Citizen public comment offers an opportunity for citizens to express opinions or ask questions regarding town services, policies, or other matters of community concern, and any items that are not on the agenda. Please attempt*

to keep comments to three (3) minutes; time limits are established to provide efficiency in the conduct of the meeting and to allow equal opportunity for everyone wishing to speak. When appropriate, any questions by the public during public comment will be followed up on by the Town Manager and Town staff. Those who are speaking are requested to state their name and address for the record.

PRESENTATIONS - 6:10 PM *Prescheduled presentations from the public are limited to 5 minutes. Invited presentations are limited to 10 minutes. Prior arrangements for presentations are made with the Town Clerk.*

1. Housing Eagle County, Haymeadow Update

CONSENT AGENDA - 6:20 PM *Consent agenda items are routine Town business, items that have received clear direction previously from the council, final land-use file documents after the public hearing has been closed, or which do not require council deliberation.*

1. Minutes - December 12, 2023
2. Bill Pay - December 2023
3. Resolution 02, Series 2024, "A Resolution of the Town Council of the Town of Eagle, Colorado Supporting the Application for Grant Funding from the Colorado Department of Local Affairs"
4. Resolution 03, Series 2024, "A Resolution of the Town Council of the Town of Eagle, Colorado Approving the Sustainability Funding Policy and Application Guidelines for the Use of Sustainability Funds."
5. Local Government Community E-Bike Rebate Grant Program Award

STAFF REPORTS - 6:25 PM *The Town Manager and department staff prepare and provide internal updates to the council.*

1. Town Manager Update
2. Department Update - for December 2023 Activities

BUSINESS ITEMS - 6:30 PM *Items and / or Public Hearings are listed under Business may be old or new and may require review or action by the council.*

1. Year Out Energy 90% Presentation
 - a. Resolution 04, Series 2024 "A Resolution of the Town Council of the Town of Eagle, Colorado Approving the Investment Grade Audit for the WWTP and LBWTP Solar Project Dated December 7, 2023; Authorizing the Mayor to Execute An Energy Performance Contract For the Project, and Directing Staff to Draft a Electric Rate Variance Request to be Signed By the Mayor and Submitted to Holy Cross Energy"
2. Resolution 05, Series 2024 "A Resolution Levying General Property Taxes for the Year 2023, to Help Defray the Costs of Government for the Town of Eagle, Colorado, for the 2024 Budget Year"
3. Appointment of Mayor Pro Tem
4. Terrace Park Community Feedback: Dogs Off-Leash

COUNCIL DISCUSSION AND FUTURE AGENDA ITEMS - 6:50 PM *Council will use this time to propose future agenda items, provide updates on Council Committees, and address general discussion items.*

EXECUTIVE SESSION - 6:55 PM

1. 1. An executive session for the purpose of receiving legal advice from the Town attorney and special counsel pursuant to CRS 24-6-402(4)(b) and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators pursuant to CRS 24-6-402(4)(e) regarding the West Eagle Annexation.

ADJOURN - 7:15 PM

I hereby certify that the above Notice of Meeting was posted by me in the designated location at least 24 hours prior to said meeting.



Jenny Rakow, CMC
Town Clerk

PUBLIC WIFI – Eagle Guest



HOUSING EAGLE COUNTY

HousingEagleCounty.com

2024 HOUSING



Housing Eagle County

MISSION STATEMENT

Housing Eagle County is elevating our community through mentorship and housing solutions.





Haymeadow

PARTNERSHIP OVERVIEW

Haymeadow Development

- 7 buildings with 76 units
- All 76 units in Phase 1 will be deed restricted to locals
 - 43 resold as Price Capped ECHDA for sale Deed Restricted units
 - 18 sold as town of Eagle LERP units
 - 15 sold as town of Eagle Resident Occupied units
- Located in south Eagle near bike park





Haymeadow

ECHDA UNITS

Eagle County Housing and Development Authority units

- 43 unit bulk purchase
- 2 bedroom and 2 bath condominiums
- Purchase price \$600,000/unit (\$25,800,000)
- Earnest money \$160,000/unit (\$6,880,000) paid in 2023
- 21 garages at \$30,000/unit (\$690,000)
- Second and third floor units
- 892 to 1081 square feet





Haymeadow

PRICING

Eagle County Housing and Development Authority will price units on average at 120% of Area Median Income at \$470,064

28 second level units

- Pricing range \$400,508 to \$481,694*
- \$449 price per square foot
- 892 to 1081 square feet units
- 4 unique floor plans
- 14 units with garages (\$30,000/garage)

15 third level units

- Pricing range \$436,188 to \$558,609*
- \$489 price per square foot
- 892 to 1081 square feet units
- 4 unique floor plans
- 7 units with garages (\$30,000/garage)
- Vaulted ceilings

*pricing subject to change





Haymeadow

BUYER COSTS

Agreement with developer asks for an average of 120% AMI at \$470,064

Purchase Price range	\$400,000*	\$479,000*	\$558,609*
Down Payment (3%)	-\$12,000	-\$14,370	-\$16,740
Loan (PI) 6.5% 30 YR	\$2,484	\$2,968	\$3,527
HOA dues	\$534	\$570	\$600
Property Tax	\$150	\$165	\$180
Insurance	\$150	\$150	\$150
Total Monthly Payment *subject to change	\$3,318	\$3,853	\$4,457

Haymeadow FLOOR PLANS



Haymeadow

BUYER DRAWING

Eagle County Housing and Development Authority shall hold a drawing for buyers interested in the 43 Haymeadow units

- Qualified Buyers must be Eligible Households
- Buyer application includes Eagle County paystubs, lease, tax return, and pre-qualification letter from lender
- One application per household
- Application available online after January 17, 2024
- Application Deadline through February 29, 2024
- Drawing held on March 7, 2024
 - Random drawing of all applicants
 - Live Broadcast in Eagle County room
 - Unit preference
 - Extra entry for price capped deed restricted owners
- Buyer under contract for purchase



HousingEagleCounty.com





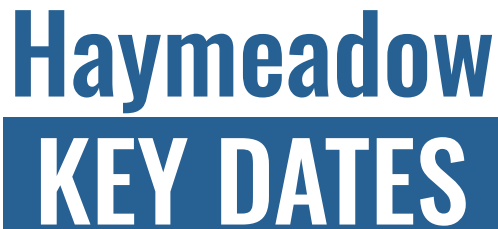
Haymeadow

MARKETING PLAN

Eagle County Housing and Development Authority will market the 43 Haymeadow price-capped for-sale units through The Valley Home Store

- **HousingEagleCounty.com/haymeadow**
- Facebook.com/housingeaglecounty
- Press Release
- Email Blast (1400 ppl)
- Newspaper Advertising
- Radio Advertising
- Information Sessions with The Valley Home Store
- Open Houses with The Valley Home Store





- 26th (Fri): Open House 12-2 pm
- 26th (Fri): Info Session 2-3 pm
- 27th (Sat): Open House 9-11 am
- 31st (Wed): Info Session 5-6 pm

- 3rd (Sat): Open House 2-4 pm
- 15th (Thu): Open House 12-2 pm
- 21st (Wed): Info Session 12-1 pm
- 21st (Wed): Open House 5-7 pm
- 29th (Thu): Application Deadline by 5 pm

- 7th (Thu): Buyer Drawing 2 pm

HousingEagleCounty.com



HOUSING EAGLE COUNTY

Housing Eagle County is elevating our community through mentorship and housing solutions.

Please visit HousingEagleCounty.com for more information.

Visite nuestro nuevo sitio web HousingEagleCounty.com para obtener más información.

Housing Eagle County Team

Meghan Scallen	970-328-8778	meghan@valleyhomestore.org
Jesus Camunez	970-328-8772	jesus@valleyhomestore.org
Melinda Dow	970-328-8776	melinda@valleyhomestore.org
Monica Brutout	970-328-8774	monica.brutout@eaglecounty.us
Brenda Camunez	970-328-8769	brenda.camunez@eaglecounty.us
Daniel Murray	970-328-8779	daniel.murray@eaglecounty.us
Matt Andrews	970-328-8771	matt.andrews@eaglecounty.us
Kim Bell Williams	970-328-8773	kim.williams@eaglecounty.us





MEETING MINUTES
Town Council
Tuesday, December 12, 2023
Public Meeting Room / Eagle Town Hall
200 Broadway Eagle, CO

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TOWN COUNCIL MEETING ACCESS INFORMATION AND PUBLIC PARTICIPATION

1. This was an in-person meeting with access via Teams.

CALL TO ORDER - 6:00 PM

Mayor Scott Turnipseed called the meeting to order at 6:00 p.m.

ROLL CALL

COUNCIL MEMBERS PRESENT

Mikel Kerst, Scott Turnipseed, Ellen Bodenhemier
(remote), Geoffrey Grimmer, Sarah Parrish, Nick
Sunday, Jamie Woodworth Foral, Bryan Woods

COUNCIL MEMBERS ABSENT

None

STAFF PRESENT

Larry Pardee, Town Manager
Melissa Daruna, Assistant Town Manager
Matt Mire, Town Attorney
Jenny Rakow, Town Clerk
Jill Kane, Finance Director/Treasurer
Cliff Simonton, Interim Community Development Director
Tom Gosiorowski, Public Works Director
Carrie Buhlman, Lieutenant
Peyton Heitzman, Planner
Lynette Horan, Human Resources Manager
Jessica Lake, Planner
Molly Furtado, Special Events Manager
Nikki Davis, Economic Development & Housing Specialist
Kira Koppel, Sustainability Specialist II
Brian Lieberman, Open Space and Trails Manager

ADOPTION OF AGENDA

MOTION: Council Member Sarah Parrish motioned to adopt the agenda as presented. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Parrish, Sunday, and Foral) and 0 opposed.

PUBLIC COMMENT

No comments.

PRESENTATIONS

1. Thank you to Sarah Parrish for her service to the Town.
Town staff, the Mayor, and the Town Council thanked Sarah for her service to the Town.

CONSENT AGENDA

MOTION: Council Member Sarah Parrish motioned to approve the consent agenda. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenheimier, Grimmer, Parrish, Sunday, and Foral) and 0 opposed.

1. Minutes - November 14, 2023
2. Bill Pay - November 2023
3. Resolution 64, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado Approving AIA Document B133 – 2019, Standard Form of Agreement Between Owner And Architect with Ohlson Lavoie Corporation for Architectural and Design Services for the Eagle Pool Replacement Project."
4. Resolution 81, Series 2023, "A Resolution of the Town Council of the Town of Eagle, Colorado, Ratifying the Town's Three-Mile Plan Adopted by the Planning and Zoning Commission"
5. Resolution 83, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado Approving the Joint Grant Application from the Town of Eagle and Mountain Recreation for a Community Impact Grant from the State Board of the Great Outdoors Colorado Trust Fund for the completion of the Haymaker Recreation Hub Enhancement Project. "
6. Resolution 87, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado to Submit a Letter of Support Advocating to Preserve Eagle Villas Apartments as Permanently Affordable Rental Housing"

OATH OF OFFICE

Town Clerk Jeny Rakow gave the Oath of Office for each member.

1. Bryan K. Woods, Council Member
2. Jamie Woodworth Foral, Council Member
3. Nick Sunday, Council Member

STAFF REPORTS

1. Town Manager Update
Larry Pardee stated that the West Eagle Project was asked to move forward with its grant application for strong communities.

Larry was thanked for sending a letter to Boone's Wine & Spirits regarding the liquor regulations.
2. Department Update

LIQUOR LICENSE AUTHORITY

1. PUBLIC HEARING: FoodSmith LLC Application for Tavern License at 318 Broadway

Mayor Scott Turnipseed convened as the liquor authority.

Applicant Allana Smith was present and described her business model to the council.

MOTION: Council Member Bryan Woods motioned to approve the Findings and Order approving a New Tavern License for FoodSmith LLC- located at 318 Broadway and direct the Mayor and Town Clerk to sign and submit the application to the State of Colorado. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

BUSINESS ITEMS

1. CONTINUED PUBLIC HEARING: File #DR23-04: 263 Sawatch Rd. Major Development Permit
Mayor Scott Turnipseed opened the public hearing for File #DR23-04: 263 Sawatch Rd. Major Development Permit.

Jessica Lake presented this item.

The applicant representative was present and gave a presentation.

Mayor Scott Turnipseed opened public comment, there was no public comment.

- a. Resolution 73, Series 2023, "A Resolution of the Town Council of the Town of Eagle, Colorado Approving a Major Development Permit and Associated Development Agreement for 263 Sawatch Road"

MOTION: Council Member Nick Sunday motioned to approve Resolution 73, Series 2023, "A Resolution of the Town Council of the Town of Eagle, Colorado Approving a Major Development Permit and Associated Development Agreement for 263 Sawatch Road". The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

2. 2024 Community Requests - Programs
MOTION: Council Member Geoffrey Grimmer motioned to approve the Community Requests as presented. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

3. Resolution 86, Series 2023, "A Resolution of the Town Council of the Town of Eagle, Colorado, adopting Open Space Management Plans for Open Space properties owned by the Town"
Mayor Scott Turnipseed thanked Brian Lieberman and OSRAC for their effort on the master plan.

Brian Lieberman gave a presentation.

Council comments: discussed ebikes and some members would like to take the lead on this topic, as it is not going away. Requested staff to meet with BLM and the county for options to change these policies. Discussion on supporting local organizations or an outside committee to pursue ebike regulations.

MOTION: Council Member Jamie Woodworth Foral motioned to approve Resolution 86, Series 2023, "A Resolution of the Town Council of the Town of Eagle, Colorado, adopting Open Space Management Plans for Open Space properties owned by the Town". The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

4. Eby Creek Apartments Sidewalk Project Funding Request
Larry Pardee presented this item.

Rick Patriacca was present and confirmed that all work is in but the flashing lights for the cross walk.

Council comments: discussion on the high unexpected cost of this item and message to staff to watch for these types of items.

MOTION: Council Member Mikel Kerst motioned to approve the Eby Creek sidewalk funding request in the amount of \$71, 747.41. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

5. Resolution 80, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado Appointing an Applicant to Fill One Vacancy on the Town of Eagle Planning and Zoning Commission and to Reclassify Laura Hartman From First Alternate to Regular Member"

Peyton Heitzman presented this item and stated staff received two applicants for the vacancy. The staff recommendation and applications were included in the packet.

Applicant Dennis Wike was present and expressed his interest in the vacancy to the council.

MOTION: Council Member Geoffrey Grimmer motioned to approve Resolution 80, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado Appointing Jennifer Sturgeon to Fill One Vacancy on the Town of Eagle Planning and Zoning Commission and to Reclassify Laura Hartman From First Alternate to Regular Member". The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

6. Resolution 82, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado, Appointing Members to Various Boards and Commissions

Council comment: agreement to appoint Bryan Woods as an alternate EVTA and DDA. Jamie Woodworth Foral volunteered to be appointed to MEAC.

MOTION: Council Member Bryan Woods motioned to approve Resolution 82, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado, Appointing Members to Various Boards and Commissions. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

7. Resolution 84, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado Adopting a Fee Schedule pursuant to 2.34 of the Eagle Municipal Code"

MOTION: Council Member Geoffrey Grimmer motioned to approve Resolution 84, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado Adopting a Fee Schedule pursuant to 2.34 of the Eagle Municipal Code". The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

8. Ordinance 09, Series 2023 "An Ordinance of the Town Council of the Town of Eagle, Colorado Amending Sections 2.02.010, 2.04.010, and 2.08.060 of the Eagle Municipal Code, Regarding Appointment of Officers"

Town Attorney Matt Mire stated this is to clean up the code for the appointment process due to home rule passage.

MOTION: Council Member Nick Sunday motioned to approve Ordinance 09, Series 2023 "An Ordinance of the Town Council of the Town of Eagle, Colorado Amending Sections 2.02.010, 2.04.010, and 2.08.060 of the Eagle Municipal Code, Regarding Appointment of Officers". The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

9. Resolution 79, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado, Appointing Eagle Municipal Judge Erik Johnson as the Hearing Officer for the Eagle Local Licensing Authority"

MOTION: Council Member None motioned to approve Resolution 79, Series 2023 "A Resolution of the Town Council of the Town of Eagle, Colorado, Appointing Eagle Municipal Judge Erik Johnson as the Hearing Officer for the Eagle Local Licensing Authority". The motion was seconded and passed with a vote of 7 in favor (Kerst,

Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

COUNCIL DISCUSSION AND FUTURE AGENDA ITEMS - 8:00 PM

1. Council Committee Updates

Mayor Scott Turnipseed expressed gratitude to the staff for all the accomplishments of 2023 and especially to Larry Pardee for his leadership.

ADJOURN - 7:15 PM

MOTION: Council Member Mikel Kerst motioned to adjourn. The motion was seconded and passed with a vote of 7 in favor (Kerst, Turnipseed, Bodenhemier, Grimmer, Woods, Sunday, and Foral) and 0 opposed.

Date:

Scott Turnipseed, Mayor

Jenny Rakow, CMC Town Clerk

**BILL SCHEDULE
DECEMBER 2023**

GENERAL FUND

Town Council

Signature Signs Inc	Office Supplies	7.00
Economic & Planning Systems, Inc.	Economic Development Plan	5,339.93
Walking Mountains Science Center	Energy Rebate Program	5,432.00
Total Town Council		\$ 10,778.93

General Government

CEBT	Health & Life Ins. Payable	3,374.56
Rocky Mountain Reserve LLC	Health & Insurance Benefits	550.15
Standard Insurance	Health & Life Ins. Payable	191.88
Cintas Corporation	Office Supplies	18.67
Gypsum Eagle Ace Hardware	Office Supplies	39.55
KLJ Engineering LLC	Professional Services	5,787.18
Love In Practice, LLC	Professional Services	2,450.00
Davis, Anna Dominique L.	Travel Expense	265.56
Fairfield Inn	Travel Expense	(46.62)
Hoffman, Parker, Wilson & Carberry, P.C.	Legal	4,619.00
El Segundo	Meeting Expense	126.25
King Soopers Customer Charges	Meeting Expense	14.97
Red Canyon Cafe	Meeting Expense	43.20
Amazon	Public Relations	29.98
Flowerhoundco.Com	Public Relations	85.50
Square Up	Public Relations	110.00
4 Eagle Ranch	Tuition & Books	594.50
Love In Practice, LLC	Tuition & Books	3,600.00
Habitat For Humanity Vail Valley, Inc.	3rd Street Housing Project Grant	280,250.00
Total General Government		\$ 302,104.33

General Administration

Colorado State Treasurer	State Unemployment Payable	2,811.19
CEBT	Health & Life Ins. Payable	7149.94
Standard Insurance Company	Health & Life Ins. Payable	314.11
Family Support Registry	Misc Deductions Payable	73.38
Avila, Adriana	Facility Usage Deposit Refund	750.00
Becerra, Sonia	Facility Usage Deposit Refund	750.00
Boeh, Tiffany	Facility Usage Deposit Refund	375.00
Calzadillas, Rey	Facility Usage Deposit Refund	375.00
Castillo, Jocelin	Facility Usage Deposit Refund	750.00
Chavez, Eloy	Facility Usage Deposit Refund	375.00
Chavez, Lidia	Facility Usage Deposit Refund	375.00
Chilos Framing	Facility Usage Deposit Refund	375.00
Connect Church	Facility Usage Deposit Refund	750.00
Diaz, Blanca	Facility Usage Deposit Refund	750.00
Eagle Valley Autobody, LLC	Facility Usage Deposit Refund	375.00
Escobedo-Esparza, Maricela	Facility Usage Deposit Refund	375.00
Fernandez Munoz, Raul	Facility Usage Deposit Refund	375.00
Lopez-Ramos, Jorge	Facility Usage Deposit Refund	625.00
Mendoza, Sonia	Facility Usage Deposit Refund	675.00
Mountain Pride	Facility Usage Deposit Refund	750.00
Never Summer Race Productions	Facility Usage Deposit Refund	750.00
O'Donnell, Vanessa	Facility Usage Deposit Refund	375.00

General Administration (Cont.)

On-Site Veterinary	Facility Usage Deposit Refund	750.00
Redeemer Eagle Valley Church	Facility Usage Deposit Refund	375.00
Saucedo, Lizbeth	Facility Usage Deposit Refund	375.00
Simmons, Alondra	Facility Usage Deposit Refund	375.00
Vail Valley Mountain Trails Alliance	Facility Usage Deposit Refund	650.00
Lopez-Ramos, Jorge	Facility Usage Fees Refund	179.13
Redeemer Eagle Valley Church	Facility Usage Fees	(34.05)
Cirsa	Insurance Proceeds	13,500.00
CEBT	Health & Life Ins. Payable	7414.99
Preventive Health Now	Health & Insurance Benefits	325.00
Rocky Mountain Reserve LLC	Health & Insurance Benefits	790.64
Amazon	Office Supplies	90.90
Cintas Corporation	Office Supplies	105.81
BadgeAndWallet	Operating Supplies	235.00
Amazon	Equipment	240.86
Pitney Bowes Global Financial Services	Communication & Shipping	65.82
Colorado Mtn. News Media	Legal Notices	857.80
Mailchimp	Dues & Subscriptions	101.00
Mountaincreeers.Com	Dues & Subscriptions	159.00
SocietyForHumanResource	Dues & Subscriptions	244.00
Chase Paymentech	C.C. Transaction Fees	154.42
Xpress Bill Pay	C.C. Transaction Fees	29.95
Employer's Council Services, Inc.	Professional Services	2,952.09
Caselle, Inc.	Computer Support	1,698.45
Gov OS, Inc.	Computer Support	250.00
Xpress Bill Pay	Computer Support	39.12
Beaver Run Resort	Travel Expense	593.70
Amazon	Meeting Expense	219.85
Costco	Meeting Expense	134.88
Event Rents	Meeting Expense	1,096.33
King Soopers Customer Charges	Meeting Expense	79.13
Second Nature Gourmet	Meeting Expense	3,475.80
Yeti's Grind	Meeting Expense	35.04
360Training.Com	Tuition & Books	43.76
Udemy	Tuition & Books	27.46
Fleet Services	Miscellaneous	789.35
Cirsa	Insurance - Pavilion	1,285.19
Total General Administration		\$ 59,979.04

Community Development

CEBT	Health & Life Ins. Payable	7,282.50
Rocky Mountain Reserve LLC	Health & Insurance Benefits	943.12
Standard Insurance Company	Health & Life Ins. Payable	220.17
Signature Signs Inc	Office Supplies	21.00
Fleet Services	Gas & Oil	237.15
Column Software, PBC	Planning Reimbursable	27.23
Garfield & Hecht, P.C.	Planning Reimbursable	5,449.00
Hoffman, Parker, Wilson & Carberry, P.C.	Planning Reimbursable	3,272.50
Hoffman, Parker, Wilson & Carberry, P.C.	Legal	994.50
Mott MacDonald	Planning Reimbursable	7,195.50
Performance Automotive Center	Repair & Maintenance Services	11.00
Town Of Gypsum	Contract Services	2,635.00
Total Community Development		\$ 28,288.67

Municipal Court

CEBT	Health & Life Ins. Payable	243.67
Rocky Mountain Reserve LLC	Health & Insurance Benefits	23.58
Standard Insurance Company	Health & Life Ins. Payable	7.80
Gendelman Klimas, Ltd	Legal	3,000.00
Caselle, Inc.	Computer Support	275.66
Johnson, Erik A.	Contract Payments - Muni Judge Services	750.00
Total Municipal Court		\$ 4,300.71

Streets

CEBT	Health & Insurance Benefits	3,605.46
Rocky Mountain Reserve LLC	Health & Insurance Benefits	886.77
Standard Insurance Company	Health & Life Ins. Payable	231.98
Amazon	Office Supply	4.60
Cintas Corporation	Office Supplies	68.11
Fontana, Kevin	Uniforms	5,258.78
Jimenez, Leo	Uniforms	165.74
Trick Threads	Uniforms	517.27
Collett Enterprises	Repair & Maintenance Supplies	260.80
Grainger	Repair & Maintenance Supplies	981.89
Lawson Products	Repair & Maintenance Supplies	444.89
Rexel USA, Inc	Repair & Maintenance Supplies	128.43
Whitehall's Alpine BG	Repair & Maintenance Supplies	279.95
Wylaco Supply Co	Repair & Maintenance Supplies	301.96
Colorado Mountain Truck Parts LLC	Vehicle Repair & Mtn Supplies	404.00
Glenwood Springs Auto Parts Inc (Napa)	Vehicle Repair & Maintenance Supplies	192.84
Two Valley Tire LLC	Vehicle Repair & Maintenance Supplies	571.56
Collett Enterprises	Gas & Oil	(25.00)
Fleet Services	Gas & Oil	3,155.61
Grainger	Equipment (Non-Capital)	1,134.94
Column Software, PBC	Communication & Shipping	35.17
Holy Cross Energy	Utility Services	5,797.44
IMS Infrastructure Management Services	Pavement Management Study	750.00
New Electric, Inc.	Repair & Maintenance Services	25,618.90
Thermo-Fluids, Inc.	Repair & Maintenance Services	129.92
Two Valley Tire LLC	Repair & Maintenance Services	548.00
Utility Notification Center Of Colorado	Repair & Maintenance Services	43.43
360 Civil, Inc.	Street Resurfacing	25,275.09
Caselle, Inc.	Computer Support	18.14
MCC Drug & Alcohol Screening	CDL Testing	60.00
Total Streets		\$ 76,846.67

Public Safety

Pinnacol Assurance	Worker's Compensation	375.20
CEBT	Health & Life Ins. Payable	23531.34
Rocky Mountain Reserve LLC	Health & Insurance Benefits	2,507.13
Standard Insurance Company	Health & Life Ins. Payable	742.31
Amazon	Office Supplies	117.95
Vista Print	Office Supplies	49.99
Zazzle Inc	Office Supplies	66.03
Amazon	Operating Supplies	111.04
Galls, LLC	Operating Supplies	215.28
Sirchie	Operating Supplies	179.64

Public Safety (Cont.)

Blauer	Uniforms	624.93
Galls, LLC	Uniforms	643.36
Safe Life Defense	Uniforms	193.65
Sinclair	R & M Supplies	4.30
Auto Zone, Inc	Vehicle Repair & Maintenance Supplies	174.99
Fleet Services	Gas & Oil	5,286.37
King Soopers Customer Charges	School Res Officer Supplies	198.83
Amazon	Equipment	893.98
Galls, LLC	Equipment (Non-Capital)	170.17
Motorola Solutions	Equipment (Non-Capital)	3,398.80
Ryders Public Safety LLC	Equipment (Non-Capital)	692.00
Ryders Public Safety LLC	Equipment & Supplies - Grants	692.00
AT&T Mobility	Utility Services	765.68
Indeed	Recruitment	54.00
Performance Automotive Center	Repair & Maintenance Services	88.00
Power DMS Inc	Computer Support	183.82
Expedia	Travel Expense	861.59
Springhill Suites	Travel	297.11
United Airlines	Travel Expense	352.79
Vaughan, Madison	Travel	215.08
Amazon	Operating Supplies	20.77
Brush Creek Saloon	Meeting Expense	47.04
Gourmet China	Meeting Expense	28.86
Yeti's Grind	Meeting Expense	25.56
Grant Management USA	Training & Travel - Grants	495.00
Grant Writing USA	Training Grants	395.00
Kaminsky, Sullenberger & Associates Inc.	Training & Travel - Grants	375.00
Springhill Suites	Travel Grants	(38.19)
Stahl, Callan	Training & Travel - Grants	515.21
Matthew Bender & Co	Tuition & Books	110.43
Eagle County Animal Control	Animal Control	10,540.00
Eagle County 800 MHz Operations	Radio Access	26,714.42
Alliance Moving Systems LLC	Contract Payments - Shredding	50.00
Steven A. Nofziger	Contract Payments - Abandon Veh Towing	75.00
Transunion Risk & Alternative Data Solut	Contract Payments	105.00
Total Public Safety		\$ 83,146.46

Buildings & Grounds

CEBT	Health & Insurance Benefits	7,483.15
Rocky Mountain Reserve LLC	Health & Insurance Benefits	723.06
Standard Insurance Company	Health & Life Ins. Payable	188.92
Amazon	Office Supply	4.60
Cintas Corporation	Office Supplies	68.11
Gypsum Eagle Ace Hardware	Operating Supplies	99.45
Fontana, Kevin	Uniforms	5,506.91
Trick Threads	Uniforms	517.27
Alpine Lumber Co.	Repair & Maintenance Supplies	483.09
Display Sales	Repair & Maintenance Supplies	1,911.56
Eagle Lock & Key	Repair & Maintenance Supplies	260.00
Gypsum Eagle Ace Hardware	Repair & Maintenance Supplies	200.93
Mac Equipment Inc	Repair & Maintenance Supplies	381.33
Mark's Plumbing Parts	Repair & Maintenance Supplies	274.40
Pye-Barker Fire & Safety LLC	Repair & Maintenance Supplies	543.00

Buildings & Grounds (Cont.)

Skyline Mechanical, Inc.	Repair & Maintenance Supplies	258.86
Collett Enterprises	Gas & Oil	(25.00)
Fleet Services	Gas & Oil	1,423.12
Home Depot Pro	Janitorial Supplies	1,361.56
Black Hills Energy	Utility Services	5,784.04
Holy Cross Energy	Utility Services	6,339.89
Indeed	Recruitment	252.19
Jerry-master Janitorial	Janitorial Maint. Contracts	2,158.00
Eagle Lock & Key	Repair & Maintenance Services	445.00
Golden Eagle Heating Cooling & Drain	Repair & Maintenance Services	885.00
Northwest Colo Council Of Gov.	Repair & Maintenance Services	131.00
Pye-Barker Fire & Safety LLC	Repair & Maintenance Services	1,539.00
Skyline Mechanical, Inc.	Repair & Maintenance Services	1,009.00
Sno-White Linen Rental	Repair & Maintenance Services	139.09
Vail Honeywagon	Repair & Maintenance Services	350.00
Yarger Services, LLC	Repair & Maintenance Services	6,898.05
Caselle, Inc.	Computer Support	18.14
G H Daniels III & Associates	Contract Payments	5,000.00
Black Diamond Fireplace, LLC	Equipment Purchase	1,820.00
Total Buildings & Grounds		\$ 54,432.72

Events

CEBT	Health & Life Ins. Payable	2174.07
Rocky Mountain Reserve LLC	Health & Insurance Benefits	251.84
Standard Insurance Company	Health & Life Ins. Payable	71.36
Signature Signs Inc	Promotional Materials	225.00
Apple	Computer Support	12.02
Canva	Computer Support	14.99
Furtado, Molly	Travel Expense	44.41
Mountain Recreation Metro District	Events - Little League Opening Day	750.00
Ren Event Productions LLC	Events - Farmers Market	1,500.00
Total Events		\$ 5,043.69

Engineering

CEBT	Health & Insurance Benefits	1,506.04
Rocky Mountain Reserve LLC	Health & Insurance Benefits	141.47
Standard Insurance Company	Health & Life Ins. Payable	47.31
Amazon	Office Supply	4.59
Cintas Corporation	Office Supplies	68.09
Fontana, Kevin	Uniforms	99.99
Miller, Martha	Dues & Subscriptions	60.00
Colorado Mtn. News Media	Recruitment	287.50
Wiley	Recruitment	(875.00)
Total Engineering		\$ 1,339.99

Information Technology

CEBT	Health & Life Ins. Payable	2168.74
Rocky Mountain Reserve LLC	Health & Insurance Benefits	242.07
Standard Insurance Company	Health & Life Ins. Payable	82.52
Amazon	Office Supplies	341.37
Gypsum Eagle Ace Hardware	Office Supplies	11.48
SHI International Corp	Office Supplies	83.00
Amazon	Equipment	2,486.70

Information Technology (Cont.)

SHI International Corp	Equipment (Non-Capital)	8,970.00
Copy Plus	Shipping	208.80
Century Link	Utility Services	6,907.76
Verizon Wireless, Bellevue	Utility Services	2,351.24
All Mountain Technologies, LLC	Professional Services	743.75
All Mountain Technologies, LLC	Computer Support	9,635.24
Argis Solutions, Inc.	Computer Support	2,281.25
Aspen Wireless Technologies, Inc.	Computer Support	2,862.50
Mammoth Networks	Computer Support	255.00
TEC Integration, Inc.	Computer Support	100.00
Professional Document Solutions, Inc.	Contract Payments	473.15
Xerox Financial Services LLC	Contract Payments	1,379.71
Total Information Technology		\$ 41,584.28

Marketing

Info Cubic	Recruitment	54.55
Mountain Lifestyle LLC	Media	2,500.00
Blizzard Press	Website	800.00
Civic Plus	Website	9,206.90
Dot Zero Multimedia	Website	160.00
Total Marketing		\$ 12,721.45

Total GENERAL FUND**\$ 680,566.94****CAPITAL IMPROVEMENTS FUND**

360 Civil, Inc.	Bus Shelter	17,992.66
Native Electric	Town Hall Improvements	1,878.00
Aspen Wireless Technologies, Inc.	IT Improvements-BB Service To Business Dist.	8,529.49
Rexel USA, Inc	Public Art	27,543.33
Martin/Martin Consulting Engineers	Sylvan Lake Rd & Capitol Flashing Lights	12,120.00
Consolidated Electrical Distributors Inc	Street Lights - Market St. LED Light Conversion	33,309.00
Rexel USA, Inc	Street Lights - Market St. LED Light Conversion	630.49
Martin/Martin Consulting Engineers	Street Replacement- Howard St	10,956.15
Stolfus & Associates	Grand Avenue Improvements	54,846.08
Southern Cross Network Cabling LLC	Police Department Equipment-Patrol Room Upgrades	8,970.00
Total CAPITAL IMPROVEMENTS FUND		\$ 176,775.20

WASTE WATER FUND

CEBT	Health & Insurance Benefits	6,582.69
Rocky Mountain Reserve LLC	Health & Insurance Benefits	730.92
Standard Insurance Company	Health & Life Ins. Payable	237.75
Amazon	Office Supply	4.60
Cintas Corporation	Office Supplies	68.10
Copy Plus	Office Supplies	30.88
Western Slope Supplies Inc	Office Supplies	9.85
Mid-American Research Chemical	Operating Supplies	381.38
Polydyne Inc.	Operating Supplies	7,590.00
Grainger	Uniforms	227.87
D Jensen Electric	Repair & Maintenance Supplies	1,350.72
Gypsum Eagle Ace Hardware	Repair & Maintenance Supplies	8.59
Joe Johnson Equipment LLC	Repair & Maintenance Supplies	647.65
Pye-Barker Fire & Safety LLC	Repair & Maintenance Supplies	92.00
Water Technology Group	Repair & Maintenance Supplies	2,277.72

WASTE WATER FUND (Cont.)

Fleet Services	Gas & Oil	304.79
Global Equipment Company Inc	Equipment (Non-Capital)	374.90
PSI Services	Tuition & Books	100.00
Federal Express Corp.	Communication & Shipping	167.76
Nextrust Inc	Communication & Shipping	300.38
Black Hills Energy	Utility Services	9,078.74
Holy Cross Energy	Utility Services	19,686.20
Colorado Mtn. News Media	Recruitment	287.50
Chase Paymentech	C.C. Transaction Fees	869.18
Xpress Bill Pay	C.C. Transaction Fees	349.40
Vranesh And Raishch, LLP	Legal & Audit	3,142.60
Denali Water Solutions LLC	Sludge Disposal	10,689.67
DRC Construction Services, Inc.	Sewer Imaging	27,376.43
D Jensen Electric	Repair & Maintenance Services	4,235.00
Joe Johnson Equipment LLC	Repair & Maintenance Services	2,035.00
Pye-Barker Fire & Safety LLC	Repair & Maintenance Services	554.00
Utility Notification Center Of Colorado	Repair & Maintenance Services	43.43
Caselle, Inc.	Computer Support	230.54
Eagle River Water & Sanitation District	Testing & Permits	7,763.00
Seacrest Group	Testing & Permits	1,460.00
SGS North America Inc	Testing & Permits	3,029.37
Colorado CWP	Tuition & Books	100.00
American Mechanical Services	Contract Payments	808.00
Colorado Energy Systems	Contract Payments	2,759.36
Intermountain Systems	Contract Payments	407.00
Water Technology Group	Contract Payments	15,000.00
Mott MacDonald	Capital Expenditures - Nutrient Criteria Nitrogen	19,169.50
Martin/Martin Consulting Engineers	Sewer Line Improvements - Howard St.	5,478.07
Total WASTE WATER FUND		\$ 156,040.54

WATER FUND

CEBT	Health & Insurance Benefits	7,959.48
Rocky Mountain Reserve LLC	Health & Insurance Benefits	991.85
Standard Insurance Company	Health & Life Ins. Payable	301.86
Amazon	Office Supply	4.59
Cintas Corporation	Office Supplies	68.08
DPC Industries, Inc.	Operating Supplies	2,885.04
Grainger	Operating Supplies	695.72
USA Blue Book	Operating Supplies	3,568.85
Lafleur, Thomas	Uniforms	284.99
Alpine Lumber Co.	Repair & Maintenance Supplies	57.58
Grainger	Repair & Maintenance Supplies	1,869.56
Gypsum Eagle Ace Hardware	Repair & Maintenance Supplies	1,213.20
Lightning Eliminators	R & M Supplies	409.24
Native Electric	Repair & Maintenance Supplies	1,262.07
Pye-Barker Fire & Safety LLC	Repair & Maintenance Supplies	199.00
USA Blue Book	Repair & Maintenance Supplies	2,149.45
Wylaco Supply Co	Repair & Maintenance Supplies	144.00
Fleet Services	Gas & Oil	1,560.49
Gypsum Eagle Ace Hardware	Equipment (Non-Capital)	1,518.93
Core & Main LP	Meters	62,499.80
Core & Main LP	Meter Related Items	642.09
Federal Express Corp.	Communication & Shipping	182.94

WATER FUND (Cont.)

Nextrust Inc	Communication & Shipping	300.38
Wilson, Stephan	Dues & Subscriptions	60.00
AmeriGas	Utility Services	7,079.10
Black Hills Energy	Utility Services	226.02
Holy Cross Energy	Utility Services	14,666.58
Colorado Mtn. News Media	Recruitment	287.50
Info Cubic	Recruitment	54.55
Chase Paymentech	C.C. Transaction Fees	1,457.17
Xpress Bill Pay	C.C. Transaction Fees	519.13
Outdoor Services Inc	Professional Services	1,000.00
Garfield & Hecht, P.C.	Legal	552.00
LRE Water	Engineering	255.00
Browns Hill Engineering	Repair & Maintenance Services	1,299.50
Native Electric	Repair & Maintenance Services	3,097.50
Pye-Barker Fire & Safety LLC	Repair & Maintenance Services	481.00
Utility Notification Center Of Colorado	Repair & Maintenance Services	43.43
Vail Honeywagon	Repair & Maintenance Services	398.48
Yarger Services, LLC	Repair & Maintenance Services	372.50
Inland Potable Services Inc	Storage Tank Maintenance	6,900.00
Eagle River Water & Sanitation District	Testing & Permits	300.00
SGS North America Inc	Testing & Permits	496.16
Caselle, Inc.	Computer Support	230.54
Colorado CWP	Tuition & Books	50.00
Colorado Water Congress	Tuition & Books	475.00
Flowpoint Environmental Systems Inc	Contract Payments	200.00
Mott Macdonald	Tank Replacement - East Eagle Tank Replacement	51,848.20
Short Elliott Hendrickson, Inc.	Tank Replacement - Eby Creek Tank/Booster & 2 MG Tank	8,651.44
Martin/Martin Consulting Engineers	Water Line Improvements - Howard Street	5,478.08
Total WATER FUND		\$ 197,248.07

REFUSE FUND

Amazon	Operating Supplies	977.49
Nextrust Inc	Communication & Shipping	300.38
Chase Paymentech	C.C. Transaction Fees	204.51
Xpress Bill Pay	C.C. Transaction Fees	89.85
Vail Honeywagon	Repair & Maintenance Service	603.45
Caselle, Inc.	Computer Support	230.53
Vail Honeywagon	Contract Services	134,317.57
Total REFUSE FUND		\$ 136,723.78

STORM WATER FUND

Nextrust Inc	Communication & Shipping	300.37
Chase Paymentech	C.C. Transaction Fees	25.56
Xpress Bill Pay	C.C. Transaction Fees	9.98
Total STORM WATER FUND		\$ 335.91

SALES TAX CAPITAL IMPROVEMENTS FUND

Hoffman, Parker, Wilson & Carberry, P.C.	Legal	445.00
Marcin Engineering	Multi-Use Rec Facilities - Pool Rebuild Project	10,695.98
Wiss Janney Elstner Associates Inc	Multi-Use Rec Facilities - Pool Rebuild Project	5,795.00
UMB Bank	Debt Service	110,000.00
UMB Bank	Debt Service Interest	105,868.75
Total SALES TAX CAPITAL IMPROVEMENTS FUND		\$ 232,804.73

OPEN SPACE FUND

CEBT	Health & Life Ins. Payable	1160.05
Rocky Mountain Reserve LLC	Health & Insurance Benefits	183.90
Standard Insurance Company	Health & Life Ins. Payable	64.53
Alpine Lumber Co.	Repair & Maintenance Supplies	33.19
Colorado Barricade	Repair & Maintenance Supplies	382.10
Gypsum Eagle Ace Hardware	Repair & Maintenance Supplies	78.93
Glenwood Springs Auto Parts Inc (Napa)	Vehicle Repair & Maintenance Supplies	64.64
Fleet Services	Gas & Oil	164.14
ERO Resources Corporation	Professional Services - Open Space Managemenet Plans	9,459.33
Chandler Consulting Inc	Appraisals	3,750.00
Vail Honeywagon	Repair & Maintenance Services	302.09
Vail Valley Mountain Trails Alliance	Trail Repair & Maintenance	12,527.34
Vail Valley Mountain Trails Alliance	Trail Construction	8,997.50
Total OPEN SPACE FUND		\$ 37,167.74

DDA FUND

Studio South LLC	Professional Services - Communications/Marketing	712.50
Total DDA FUND		\$ 712.50

Total	\$ 1,618,375.41
Payroll	\$ 630,433.51
Grand Total	\$ 2,248,808.92



To: Mayor Turnipseed and Town Council
From: Nikki Davis, Economic Development & Housing Specialist
CC: Community Development
Date: January 9, 2024

Agenda Item: Resolution 02, Series 2024, “A Resolution of the Town Council of the Town of Eagle, Colorado Supporting the Application for Grant Funding from the Colorado Department of Local Affairs”

REQUEST:

Staff requests the Town Council review and approve Resolution 02, Series 2024 supporting a grant application to fund three projects aimed at increasing the Town’s capacity to address affordable housing challenges.

INTRODUCTION:

The Colorado Department of Local Affairs (“DOLA”), with funding from the Statewide Affordable Housing Support Fund, has established the Local Planning Capacity (“LPC”) grant program. This is one of several Proposition 123 funding programs available through DOLA and the Colorado Housing and Finance Authority (“CHFA”).

On December 4, 2023, the Town submitted a letter of intent (“LOI”) to apply for the LPC grant program. Specifically, the Town requested funding to support three projects: 1) create a fast-track review process for affordable housing projects, 2) conduct a land inventory for affordable housing potential on publicly owned land, and 3) create a Proposition 123 funding strategy.

DOLA has invited the Town of Eagle to apply. The application is due February 15, 2024, and the grant awards are anticipated this spring.

ANALYSIS:

The program’s primary intent is to support local governments’ capacity to address affordable housing challenges, particularly through expediting review, permitting, zoning, and development. The program also supports a suite of other eligible projects, some of which align with the strategies outlined in the Town’s Housing Assessment ([LINK](#)). Applications emphasizing the implementation of a fast-track process (required by January 2027 for those who opted into Proposition 123) and lean business principles to improve inter-agency coordination will be highly competitive. Through this grant opportunity, the Town also aims to enhance its responsiveness to new development and funding opportunities by cataloging available public land, assessing site readiness, and developing a Proposition 123 funding strategy.

COMMUNITY INPUT:

None.

BUDGET / STAFF IMPACT:

To inform our funding request, staff gathered cost estimates from former consultant partners. Based on the proposed scope of services for all three projects, the estimated total cost is \$68,000. The grant requires a 20% community match which equates to \$13,600. This will be sourced from the General Government budget.

The projects will require staff time to draft RFPs, facilitation, and grant administration.

STRATEGIC PLAN ALIGNMENT/STANDARDS ACHIEVED:

If awarded the funds, the projects would support 2020 Town Council Strategic Plan's Major Objective to create opportunities for a diversified and attainable housing stock for a variety of rental and purchase options. Additionally, the projects would support Policy 1-1.3 of the Elevate Eagle Comprehensive Plan to stimulate the creation of workforce housing through town policies, incentives, and regulatory procedures.

RECOMMENDED ACTION OR PROPOSED MOTION:

A motion to **APPROVE** Resolution 02, Series 2024, "A Resolution of the Town Council of the Town of Eagle, Colorado Supporting the Application for Grant Funding from the Colorado Department of Local Affairs."

ATTACHMENTS:

- Resolution 02, Series 2024
- Local Planning Capacity Grant Program Guidelines ([LINK](#))

TOWN OF EAGLE, COLORADO
RESOLUTION NO. 02
(Series of 2024)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO
SUPPORTING THE APPLICATION FOR GRANT FUNDING FROM THE COLORADO
DEPARTMENT OF LOCAL AFFAIRS.

WHEREAS, a major objective of the 2020 Town Council Strategic Plan is to create opportunities for a diversified and attainable housing stock for a variety of rental and purchase options; and

WHEREAS, Policy 1-1.3 of the Elevate Eagle Comprehensive Plan is to stimulate the creation of workforce housing through Town policies, incentives, and regulatory procedures; and

WHEREAS, the Town plans to apply for the Local Planning Capacity Grant Program through the Colorado Department of Local Affairs ("DOLA") to fund three projects: 1) create a fast-track review process for affordable housing projects, 2) conduct a land inventory for affordable housing potential on publicly owned land, and 3) create a Proposition 123 funding strategy; and

WHEREAS, the application for the Local Planning Capacity Grant is due February 15, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO AS FOLLOWS:

Section 1. The Town Council hereby supports the Town's application for funds from DOLA's Local Planning Capacity Grant Program.

INTRODUCED, READ, PASSED AND ADOPTED ON January 9, 2024.

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor

ATTEST:

Jenny Rakow, Town Clerk



To: Mayor Turnipseed and Town Council

From: Kira Koppel, Sustainability Specialist

Date: January 9, 2024

Agenda Item: Resolution 03, Series 2024, "A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO APPROVING THE SUSTAINABILITY FUNDING POLICY AND APPLICATION GUIDELINES FOR THE USE OF SUSTAINABILITY FUNDS"

REQUEST: Town staff requests that Town Council review and approve Resolution XX, establishing the Sustainability Funding Policy & Application Guidelines, which will guide how funds within the 2024 Sustainability Initiatives budget are used.

BACKGROUND: The funding allocated for sustainability initiatives is new in 2024 and did not undergo a typical and itemized budget planning process, due to the time at which the new sustainability specialist position was established and filled. The purpose of this resolution and policy documents is to establish a consistent process for the use of funds in accordance with the town's net zero goals, 2024 priorities, and guidance from Town Council at the December 12, 2023 sustainability work session.

ANALYSIS: The Sustainability Funding Policy & Application process will ensure consistent use of funds that will achieve meaningful progress toward the town's net zero goals (2028 for internal town operations and 2030 for the Eagle community). This policy provides a framework through which community groups can request funding for initiatives in alignment with the town's net zero goals. The policy also establishes a process by which internal staff will plan for use of funds and ensure council approval before pursuing grant funding opportunities and expenditures from the Sustainability Initiatives budget.

Staff determined that there are small expenditures for which grant funding will be difficult to obtain and that are essential starting points for enhancing a culture of sustainability at the town, and are therefore exempt from the sustainability funding policy. These small expenditures will be capped at a cost of \$2,500 and will be utilized by the town green team for internal operations in accordance with the Town of Eagle Net Zero Action Plan for Internal Operations, as reviewed by council on December 12th.

COMMUNITY INPUT: Not applicable.

BUDGET / STAFF IMPACT: Approving this policy and guidelines will help staff most efficiently identify and assess requests from community groups for sustainability funding. It will provide a framework through which community groups can apply for funding with a consistent process with measurable outcomes. Town staff will review applications and issue a recommendation to either approve or deny funding requests, for which a final determination will be made by Town Council.

Utilizing this process will require staff time, and will also ensure town staff, town council, and community groups are aligned in our approach to measurably reduce greenhouse gas emissions. Additionally, this policy will ensure a strategic approach to grant funding applications, requiring Town Council approvals in advance of pursuing such opportunities.

STRATEGIC PLAN ALIGNMENT/STANDARDS ACHIEVED:

This policy aligns with the town's goal to elevate our relationship with the environment by supporting and demonstrating sustainability (Goal 4-3 of Elevate Eagle Comprehensive Plan) and with the town's strategic objective to invest in environmental and energy sustainability. It will also support further implementation of Town Council Resolution No. 56, a resolution adopting town-wide sustainability goals.

RECOMMENDED ACTION OR PROPOSED MOTION: A motion to **APPROVE** Resolution 03, "A Resolution of the Town Council of the Town of Eagle, Colorado, Approving the Sustainability Funding Policy and Application Guidelines for the Use of Sustainability Funds."

An additional motion to **APPROVE** an expenditure of \$2,500 from the Sustainability Initiatives budget for use by the town's green team, recognizing this expenditure is exempt from the Sustainability Funding Policy and Application Guidelines.

ATTACHMENTS:

- Resolution 03, Series 2024
- Town of Eagle Sustainability Funding Policy
- Town of Eagle Sustainability Funding Application Guidelines

TOWN OF EAGLE, COLORADO
RESOLUTION NO. 03
(Series of 2024)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO
APPROVING THE SUSTAINABILITY FUNDING POLICY AND APPLICATION
GUIDELINES FOR THE USE OF SUSTAINABILITY FUNDS.

WHEREAS, the Town Council adopted a strategic plan with a major objective to *Invest in Environmental and Energy Sustainability*;

WHEREAS, the Town Council passed Resolution No. 56 on the 27th of July, 2021, adopting the town-wide sustainability goals of achieving net zero carbon emissions for the Town of Eagle operations by 2028 and achieving net-zero carbon emissions in the greater Eagle community by 2030.

WHEREAS, the Town Council approved the 2024 budget, allocating \$250,000 toward 2024 Sustainability Initiatives.

WHEREAS, the Town identified a need to formalize how funds are dispersed from the 2024 Sustainability Initiatives budget to ensure they effectively contribute toward the aforementioned sustainability goals;

WHEREAS, the Town Council supports measurable action toward achieving the town's sustainability goals;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO AS FOLLOWS:

Section 1. The Sustainability Funding Policy and Application Guidelines are hereby approved substantially in the form attached hereto.

INTRODUCED, READ, PASSED AND ADOPTED ON January 9, 2024.

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor

ATTEST:

Jenny Rakow, Town Clerk



Town of Eagle Sustainability Funding Policy

The Town of Eagle is committed to achieving Net Zero emissions by 2028 and 2030. This policy aims to provide financial support for sustainability initiatives that align with these goals. We recognize the urgency of addressing climate change and are dedicated to investing in projects that have a tangible impact on reducing our carbon footprint. The Town invests in projects that maximize impact, innovation, and community involvement to accelerate progress towards these targets.

1. Alignment with Strategic Goals:

- 1.1. Funding support will be prioritized for projects aligning with the most significant and strategic goals to achieve Net Zero by 2028 and 2030.
- 1.2. Applicants must clearly articulate how their project contributes to the overarching sustainability objectives and milestones set forth by the Town.

2. Funding Matching Ratio Goal:

- 2.1. A 2- or 3-to-1-dollar match ratio aims to maximize the impact of every Town dollar invested. Also, this policy recognizes that flexibility will need to be considered if funding ratios are less than a 2- or 3-to-1-dollar match but achieve our top priorities.
- 2.2. Applicants must demonstrate a clear and achievable plan to secure matching funds from external sources, ensuring a robust financial foundation for the proposed project.

3. Allocation of First-Year of 2024 Funding:

- 3.1. In the initial year of funding, 75% of the allocated funds will be directed towards initiatives supporting the Net Zero 2028 Town goal.
- 3.2. The remaining 25% will be allocated to projects contributing to the Net Zero 2023 community goal.
- 3.3. This allocation strategy balances short-term and long-term sustainability objectives, fostering a comprehensive and inclusive approach to achieving Net Zero targets.

4. Application Process:

- 4.1. All applicants must submit a detailed proposal outlining the project's objectives, budget, timeline, and expected outcomes to be accomplished.
- 4.2. Town staff will review applications first and assess the alignment with strategic goals, the potential for impact, and the ability to secure matching funds approved by the Town Council.



4.3. Approved projects will enter into a funding agreement with the Town, specifying reporting requirements, milestones, and evaluation criteria.

5. Reporting and Accountability:

5.1. Recipients of funding support must provide regular progress reports, including financial statements, to ensure transparency and accountability.

5.2. The Town reserves the right to reassess funding if a project deviates from the agreed-upon goals or fails to meet established milestones.

7. Review and Adaptation:

7.1. This policy will be subject to periodic review to ensure its effectiveness in meeting the Town's sustainability goals.

7.2. Amendments may be made based on changing circumstances, emerging opportunities, or lessons learned from previous funding cycles.

8. Conclusion:

8.1. The Town is committed to supporting innovative and impactful sustainability projects, and this policy provides a framework to ensure strategic investment in initiatives is in place to advance our Net Zero goals.

8.2. This policy will be periodically reviewed to assess its effectiveness and relevance. Adjustments may be made to align with emerging sustainability priorities, technological advancements, or changing community needs.



Sustainability Funding Support Application

Project Title: (Enter Project Title)

Organization/Individual Name: (Enter Applicant Name)

Contact Information: (Enter Contact Information)

Project Overview:

Please provide a brief overview of your project, detailing its objectives, target outcomes, and how it aligns with the Net Zero 2028 and Net Zero 2030 goals (NZ-2028 or NZ-2030).

Budget Overview:

- Total Project Cost: (Enter Total Project Cost)
- Requested Town Funding: (Enter Amount)
- Dollar Match Ratio: (Specify 2- or 3-to-one ratio)
- Other Funding Sources: (List other funding sources and amounts)

Strategic Alignment:

Please explain how your project aligns with the most significant strategic goals outlined in the Sustainability Funding Support Policy, focusing on its contribution to carbon reduction, energy efficiency, renewable energy, and overall sustainability.

Community Engagement:

Detail the level of community engagement and support for your project. Include any collaboration with local stakeholders and the anticipated community benefits.

Timeline:

Provide a timeline for project implementation, including key milestones and completion dates.

Measurable Outcomes:

Outline specific and measurable outcomes expected from your project, demonstrating its impact on achieving the NZ-2028 and/or NZ-2030 goal(s).

Monitoring and Reporting:

Describe your plan for monitoring the project's progress and providing regular updates to the Town regarding its implementation and outcomes.



Attachments:

Include any supporting documents, such as project plans, environmental impact assessments, or letters of support from community stakeholders.

Conclusion:

This draft policy and application form the foundation for a structured and strategic approach to sustainability funding support, ensuring that investments align with Net Zero goals and contribute significantly to the Town's environmental objectives.



To: Mayor Turnipseed and Town Council

From: Kira Koppel, Sustainability Specialist

Date: January 9, 2024

Agenda Item: Local Government Community E-Bike Rebate Grant Program Award

REQUEST: Town staff requests that Town Council review and accept a \$35,000 grant award from the Colorado Energy Office for income-qualified e-bike rebates for Town of Eagle residents, which requires a \$8,750 match. Staff recommends that Town Council approve the Town of Eagle Sustainability Funding Application for Income Qualified E-Bike Rebate Grant Acceptance, thereby approving an \$8,750 expenditure from the 2024 Sustainability Initiatives budget.

BACKGROUND: The Colorado Local Government Community E-Bike Rebate Grant Program exists to provide funding to local and Tribal governments for the development and implementation of an e-bike rebate program in their community. Qualified projects must meet the following criteria: (1) Increase access to e-bikes for income-qualified individuals while maximizing air quality benefits and greenhouse gas (GHG) emissions reductions, (2) Represent the geographic diversity of Colorado communities, and (3) Ensure viability beyond the term of this project.

In the absence of a formal policy governing expenditures within the 2024 Sustainability Initiatives budget at the time, town sustainability staff pursued \$35,000 in funding from the Local Government Community E-Bike Rebate Grant Program Award, managed by the Colorado Energy Office, in mid-December. Town staff was successful in their efforts, receiving a Letter of Intent to Award \$35,000 from the Colorado Energy Office.

The award will enable the issuance of multi-tier rebates to income-qualified Eagle residents. Low-income residents (under 80% AMI) will be eligible for up to a \$2,000 rebate for qualifying e-bikes, and moderate-income residents (80-100% AMI) will be eligible for up to a \$1,000 rebate for qualifying e-bikes. Greater rebate amounts are available for e-cargo bikes and adaptive e-bikes. Acceptance of this award and program will support the purchase and adoption of electric bikes by residents who otherwise could not afford them. It ensures our approach to sustainability and net zero carbon emissions is equitable and inclusive of our entire Eagle community.

Rebates are designed to be post-sale so residents can take advantage of a larger variety of e-bike models found throughout the county and online, ensuring the e-bikes meet the specific needs of our residents and will be used to replace trips otherwise taken by gas- and diesel-powered vehicles.

ANALYSIS:

The Town of Eagle Net Zero Action Plan (NZAP), prepared by the Adam Palmer Sustainability Fund, identified transportation as the largest source of greenhouse gas (GHG) emissions in Eagle in 2020 (the most recent data

set specific to Eagle), thereby making the reduction of transportation emissions a top priority for community sustainability initiatives in 2024. With only 25% of the 2024 Sustainability Initiatives budget allocated for community initiatives, it is essential that each dollar approved for use from that 25% be leveraged with grant funding and achieve measurable reductions in GHG emissions.

Providing financial incentives to residents who would utilize e-bikes for in-town travel but could not otherwise afford to purchase an e-bike of their own is a clear and measurable avenue to reduce vehicle miles traveled. E-bikes have become very popular in Eagle, but only for those who can afford them. Accepting this grant award will allow the town to take immediate action in equitably reducing transportation emissions in 2024.

COMMUNITY INPUT: The Adam Palmer Sustainability Fund provided a letter of support for the grant application and will serve as a partner in the rebate program, supporting outreach efforts, marketing materials, and translation of such materials into Spanish.

BUDGET / STAFF IMPACT:

The \$8,750 funding request equates to a 25% match, which was required based on the amount of the total grant award (\$35,000).

Implementation of the rebate program will require staff time to develop the application form, process applications, and issue rebates to approved residents. The rebate program will close by December 31, 2024.

Funding request	\$35,000
Cash match	\$8,750
Total program budget	\$43,750

STRATEGIC PLAN ALIGNMENT/STANDARDS ACHIEVED:

This policy aligns with the town’s goal to elevate our relationship with the environment by supporting and demonstrating sustainability (Goal 4-3 of Elevate Eagle Comprehensive Plan) and with the town’s strategic objective to invest in environmental and energy sustainability. It will also support further implementation of Town Council Resolution No. 56, a resolution adopting town-wide sustainability goals.

RECOMMENDED ACTION OR PROPOSED MOTION:

A motion to formally **ACCEPT** the \$35,000 grant award from the Colorado Energy Office and to **APPROVE** an expenditure of \$8,750 from the Sustainability Initiatives budget for the town’s 25% match.

ATTACHMENTS:

- Colorado Energy Office, Intent to Award Letter
- Town of Eagle Sustainability Funding Application – Income Qualified E-Bike Rebate Grant Acceptance
- Town of Eagle Sustainability Funding Policy
- Community E-Bike Rebate Grant Award Application – Town of Eagle



Colorado Energy Office
1600 Broadway, Suite 1960
Denver, CO 80202

Kira Koppel
Sustainability Specialist
Town of Eagle
200 Broadway St.
Eagle, CO 81631

December 18, 2023

RE: Local Government Community E-Bike Rebate Grant Program, Intent to Award Letter

Dear Kira,

We are pleased to inform you that your project proposed to the Local Government Community E-Bike Rebate Grant Program has been selected for funding. Your project was evaluated favorably and will contribute positively to the community and to the State. This letter serves as the formal notification of the Colorado Energy Office's (CEO) intent to award Town of Eagle per the grant announcement released through the Local Government Community E-Bike Rebate Grant Program. The award amount is \$35,000.

We would like to thank you for your time and efforts in preparing a response to this solicitation. An affirmative, written response to this letter will indicate your formal acceptance of the award, at which point we will begin the contracting process. As a reminder, awardees are instructed not to begin work, purchase materials, or enter into subcontracts relating to the project until the grant award is executed by the State.

We invite you to contact Senior Program Manager, Sarah Thorne, directly at 720-653-2446 or sarah.thorne@state.co.us if you would like additional information or have any questions about the grant process.

Lastly, congratulations. On behalf of the Colorado Energy Office, we look forward to working with you to improve access to affordable transportation options, reduce emissions and improve local air quality.

Sincerely,

Sarah Thorne
Senior Program Manager, Transportation Fuels and Technology
Colorado Energy Office
720.653.2446
sarah.thorne@state.co.us



Town of Eagle Sustainability Funding Policy

The Town of Eagle is committed to achieving Net Zero emissions by 2028 and 2030. This policy aims to provide financial support for sustainability initiatives that align with these goals. We recognize the urgency of addressing climate change and are dedicated to investing in projects that have a tangible impact on reducing our carbon footprint. The Town invests in projects that maximize impact, innovation, and community involvement to accelerate progress towards these targets.

1. Alignment with Strategic Goals:

- 1.1. Funding support will be prioritized for projects aligning with the most significant and strategic goals to achieve Net Zero by 2028 and 2030.
- 1.2. Applicants must clearly articulate how their project contributes to the overarching sustainability objectives and milestones set forth by the Town.

2. Funding Matching Ratio Goal:

- 2.1. A 2- or 3-to-1-dollar match ratio aims to maximize the impact of every Town dollar invested. Also, this policy recognizes that flexibility will need to be considered if funding ratios are less than a 2- or 3-to-1-dollar match but achieve our top priorities.
- 2.2. Applicants must demonstrate a clear and achievable plan to secure matching funds from external sources, ensuring a robust financial foundation for the proposed project.

3. Allocation of First-Year of 2024 Funding:

- 3.1. In the initial year of funding, 75% of the allocated funds will be directed towards initiatives supporting the Net Zero 2028 Town goal.
- 3.2. The remaining 25% will be allocated to projects contributing to the Net Zero 2023 community goal.
- 3.3. This allocation strategy balances short-term and long-term sustainability objectives, fostering a comprehensive and inclusive approach to achieving Net Zero targets.

4. Application Process:

- 4.1. All applicants must submit a detailed proposal outlining the project's objectives, budget, timeline, and expected outcomes to be accomplished.
- 4.2. Town staff will review applications first and assess the alignment with strategic goals, the potential for impact, and the ability to secure matching funds approved by the Town Council.



4.3. Approved projects will enter into a funding agreement with the Town, specifying reporting requirements, milestones, and evaluation criteria.

5. Reporting and Accountability:

5.1. Recipients of funding support must provide regular progress reports, including financial statements, to ensure transparency and accountability.

5.2. The Town reserves the right to reassess funding if a project deviates from the agreed-upon goals or fails to meet established milestones.

7. Review and Adaptation:

7.1. This policy will be subject to periodic review to ensure its effectiveness in meeting the Town's sustainability goals.

7.2. Amendments may be made based on changing circumstances, emerging opportunities, or lessons learned from previous funding cycles.

8. Conclusion:

8.1. The Town is committed to supporting innovative and impactful sustainability projects, and this policy provides a framework to ensure strategic investment in initiatives is in place to advance our Net Zero goals.

8.2. This policy will be periodically reviewed to assess its effectiveness and relevance. Adjustments may be made to align with emerging sustainability priorities, technological advancements, or changing community needs.



Sustainability Funding Support Application

Project Title: Town of Eagle Income-Qualified E-Bike Rebate Program

Organization/Individual Name: Town of Eagle

Contact Information: Kira Koppel, Sustainability Specialist

Project Overview:

Please provide a brief overview of your project, detailing its objectives, target outcomes, and how it aligns with the Net Zero 2028 and Net Zero 2030 goals (NZ-2028 or NZ-2030).

The Town of Eagle would like to initiate a rebate program for e-bikes that applies specifically to Eagle residents earning low to moderate incomes. The neighboring towns in our county (Avon, Vail, Edwards Metro District) have provided e-bike rebates for the past few years, including both income-qualified rebates and general rebates as well. E-bikes have become prevalent in the town for those who can afford them, though town staff have identified a gap in use and access for our lower-income residents. We plan to offer post-sale rebates so residents can take advantage of a larger variety of e-bike models found throughout the county and online. The town has been awarded \$35,000 from the state with a match of \$8,750, bringing the total funds and project budget to \$43,750. We anticipate offering a tiered rebate system based on income level, with applicants under 80% AMI eligible for up to the maximum allowable rebate amounts for e-bikes, e-cargo bikes, and adaptive e-bikes (see budget section for specific amounts). Rebate amounts will not exceed the total cost of the purchased e-bike, nor will they cover sales tax. The Town of Eagle is an extremely bike-friendly community, though studies have shown that transportation remains our highest source of GHG emissions. Ensuring everyone in the community has access to e-bikes will help us make progress toward our goal of net-zero GHG emissions by 2030 for the Eagle community.

Budget Overview:

- Total Project Cost: \$43,750
- Requested Town Funding: \$8,750
- Dollar Match Ratio: 5:1 ratio (grant : requested)
- Other Funding Sources: Colorado Local Government Community E-Bike Rebate Grant Program award (\$35,000)

Low income rebate caps [\(80% AMI or less\)](#)

- \$2,000 for e-bikes
- \$3,000 for e-cargo bikes
- \$4,000 for adaptive e-bikes

Moderate income rebate caps [\(80-100% AMI\)](#)

- \$1,000 for e-bikes



- \$2,000 for e-cargo bikes
- \$3,000 for adaptive e-bikes

Project Budget

Cost category	Total cost	Further detail	Percent of total budget
Rebate amounts	\$39,850	Total available for low and moderate income rebates	91%
Administrative costs – promotional materials	\$1,000	Printed material for program promotion, materials for check mailing	2.3%
Administrative costs – outreach & marketing conducted by Adam Palmer Sustainability Fund	\$2,900	Labor for outreach Translation services	6.6%
Totals	\$43,750		100%

Strategic Alignment:

Please explain how your project aligns with the most significant strategic goals outlined in the Sustainability Funding Support Policy, focusing on its contribution to carbon reduction, energy efficiency, renewable energy, and overall sustainability.

The Net Zero Action Plan, prepared by the Adam Palmer Sustainability Fund, states that transportation is Eagle’s largest source of GHG emissions (47%) and that 40% of the transportation emissions can be attributed to in-town travel. Providing incentives for residents to purchase e-bikes is a viable solution to equitably reduce such emissions by getting residents out of gasoline and diesel-powered vehicles and on e-bikes. This e-bike rebate program aims to equitably increase the opportunity for all residents to participate in our collective goal to reduce transportation emissions. This initiative will also positively contribute to the town’s net zero carbon by 2030 goal, at a low cost to the town and with a 5:1 match already secured with grant funding.

Community Engagement:

Detail the level of community engagement and support for your project. Include any collaboration with local stakeholders and the anticipated community benefits.

This program aims to have a high level of community engagement, as it is premised upon providing a direct financial benefit to income-qualified residents. The Town has selected the Adam Palmer Sustainability Fund (APSF) as an implementation partner, to support efforts in outreach to our lower income residents and Spanish-speaking residents. We also plan to leverage the marketing efforts of Walking Mountains, as we have established a partnership between Walking Mountains, the Town and APSF to conduct targeted energy



efficiency outreach in Spanish to lower income Eagle residents. Adding information about the available e-bike rebates will be easily added to such outreach materials. The Town of Eagle is also planning an EV Ride N Drive event in May with Walking Mountains Science Center that will include e-bikes. We plan to promote this program and invite recipients to share their experience with their e-bikes at that event.

The uptake in e-bikes among Eagle residents who can afford them has been clear over the past two years, though not all residents can access e-bikes due to the high up-front cost. Demand for e-bikes throughout Eagle County has also been clear, with neighboring towns and utilities providing rebates (Edwards Metro District, Town of Avon, Town of Vail, Holy Cross Energy, State of Colorado). This rebate program is designed to ensure our income-qualified residents will receive as much choice as possible for the model and style of e-bike, to ensure it fits their specific needs.

Timeline:

Provide a timeline for project implementation, including key milestones and completion dates.

Between now and the grant award period, the town plans to work internally to refine the process between rebate application, approval, and issuance. This will be completed before the end of January to ensure ample time for a smooth process. Our sustainability specialist, finance team, and HR/IT staff will need to be involved in the process:

1. Questions will be directed to the sustainability specialist.
2. Rebate applicants will be submitted through the website. The sustainability specialist will monitor and check these every 2 weeks at a minimum.
 - a. The town clerk will ensure information that is posted is in accordance with our obligations to the public.
 - b. HR/IT will ensure we follow correct procedures to process resident information and ensure confidentiality of such information.
3. Once the rebate application is approved, the sustainability specialist will place the pertinent information into our accounts payable process.
4. Finance team will approve invoices for the rebate amounts, and cut and mail checks.
 - a. There will be a space to indicate preferred check pickup rather than mail service on the rebate application. Finance and sustainability specialist will work together to effectively communicate with recipients picking up checks in person.

Between notification of award and January 31st, we will develop a webpage specific to the rebates, the application form, and outreach materials for digital channels. Our website provider, CivicPlus, provides easy avenues through which to include new forms and upload attachments with security. We have a monthly community-wide newsletter as well as social media accounts on which the information will be regularly showcased. Application forms will need to be accessible on a mobile device.

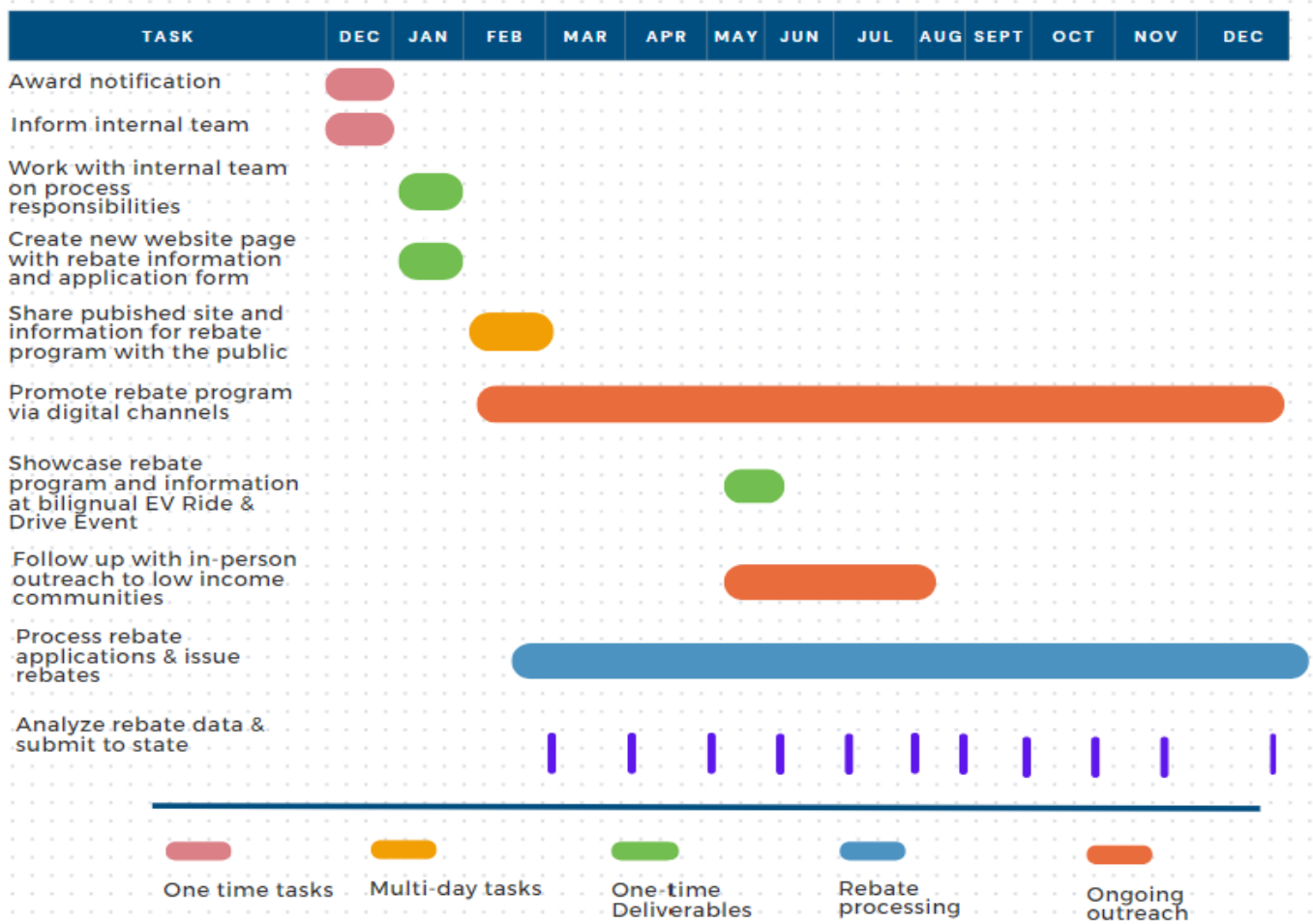
Responses to rebate applicants will be issued throughout the process with automated replies, triggered by the application form and workflow (if possible), letting applicants know we received their application, and when to



expect a response as to the status of their rebate application, and whether or not they will be receiving a rebate based on eligibility.

Monthly data will be collected and monitored by town sustainability staff and sent to the Colorado Energy Office.

TIMELINE PROGRESS - EV REBATE PROGRAM DEC 2023-DEC 2024



Measurable Outcomes:

Outline specific and measurable outcomes expected from your project, demonstrating its impact on achieving the NZ-2028 and/or NZ-2030 goal(s).



According to the Town of Eagle NZAP, “40% of Eagle’s transportation emissions result solely from automobile travel within Eagle town boundaries.” The number one recommended strategy for achieving net zero transportation emissions is reducing vehicle miles traveled in gasoline and diesel-fueled vehicles. This funding will enable the town to provide incentives for residents to purchase e-bikes who couldn’t otherwise afford them. Rebate applicants will need to indicate they plan to use their e-bike to replace trips in a gas or diesel-fueled vehicle.

Monitoring and Reporting:

Describe your plan for monitoring the project’s progress and providing regular updates to the Town regarding its implementation and outcomes.

By accepting the grant award associated with this project, the town will be collecting and obligated to report the following information to the state monthly:

- # applications received
- # applications approved
- # rebates issued

Regular surveys will also be sent to recipients to gather data on how they are using their e-bike and to inform future effectiveness of the program.

Attachments:

- Community E-Bike Rebate Grant Program Application – Town of Eagle
- Colorado Energy Office Letter of Intent to Award

Conclusion:

This draft policy and application form the foundation for a structured and strategic approach to sustainability funding support, ensuring that investments align with Net Zero goals and contribute significantly to the Town's environmental objectives.



**STATE OF COLORADO
COLORADO ENERGY OFFICE
REQUEST FOR APPLICATIONS (RFA)
PROPOSAL SUMMARY SHEET**

**Return all
Proposals:** sarah.thorne@state.co.us

RFA Due Date: 11/30/2023, 5:00 pm MST

TITLE: Local Government Community E-Bike Rebate Grant

F.E.I.N.: 84-6000655

Authorized Signature: Melissa Daruna

Typed/Printed Name: Melissa Daruna

Title: Assistant Town Manager

Organization Name: Town of Eagle

Address: 200 Broadway Street

City: Eagle **State:** CO **Zip:** 81631

Phone Number: 970-328-6354 **Fax Number:** 970-328-5203

Contact for Kira Koppel

Clarifications:

Title: Sustainability Specialist

Phone Number: 970-328-9658 **Fax Number:** _____

E-mail Address: kira.koppel@townofeagle.org

IMPORTANT: THIS FORM MUST BE COMPLETED, SIGNED AND RETURNED AS THE FIRST PAGE OF YOUR PROPOSAL. Signing this form agrees to the following as stated in the RFA: "An application submitted in response to this RFA shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the signature on the Application Summary Sheet (Attachment 1) of the applicant or an officer of the applicant legally authorized to execute contractual obligations and bind the applicant to the application. By submitting an application, the applicant affirms its acceptance of the terms and requirements of this RFA, including its attachments and appendices, without exception, deletion, or qualification - and without making its offer contingent. The applicant further agrees to cooperate with CEO and expedite the contracting process upon notice of award. Applications that do not contain a completed Application Summary Sheet will not be considered for funding under the Community Access to Electric Bicycles Grant Program. Attachment 1 must be completed, signed and returned as the first page of an applicant's response."



Local Government Community E-Bike Rebate Grant

Grant Program Application Form

General Instructions

Applicants should complete and sign the Application Summary Sheet (Attachment 1) and include it as the first page of the submitted application. All applicants should complete the remainder of the application using this form.

Applications, excluding any cover page, table of contents, pictures, maps, other required forms, and attachments, should not exceed 15 consecutively numbered, 8.5x11-inch pages of single-spaced, standard 11-point type with 1-inch margins and black text. Formal page count does not include the Application Summary document, General Instructions included in the Application Form, or any required attachments.

Please send proposals in Word and PDF format to sarah.thorne@state.co.us. Applications are due by November 30, 2023 at 5:00 pm MST.

All attachments should be included in ONE (1) document containing a table of contents which denotes the appropriate title and page number of each item. Use the following convention in naming proposal documents:

Community E-Bike Rebate Grant Application– Lead Applicant Name
Community E-Bike Rebate Grant Attachments – Lead Applicant Name

Applicant Information

Lead Applicant Name/Title: Kira
Koppel/Sustainability Specialist

Lead Organization Address: 200 Broadway
Street, Eagle, CO 81631

Project Title: Town of Eagle E-Bike Rebates

Lead Organization DUNS Number: 043274588

Lead Applicant Email Address:
kira.koppel@townofeagle.org

Project Partners: Adam Palmer Sustainability
Fund

Lead Applicant Phone Number: 970-328-9658

Project Partner Phone Number: 317-828-2625

Lead Organization Name: Town of Eagle

Project Partner Email Address: info@apsf.org

1. Project Abstract

The Town of Eagle (“the town”) would like to initiate a rebate program for e-bikes that applies specifically to Eagle residents earning low to moderate incomes. The neighboring towns in our county (Avon, Vail, Edwards Metro District) have provided e-bike rebates for the past few years, including both income-qualified rebates and general rebates as well. E-bikes have become prevalent in the town for those who can afford them, though town staff have identified a gap in use and access for our lower-income residents. We plan to offer post-sale rebates so residents can take advantage of a larger variety of e-bike models found throughout the county and online. The town seeks a total grant award of \$35,000 with a match of \$8,750, bringing the total funds to \$43,750. We anticipate offering a tiered rebate system based on income level, with applicants under 80% AMI eligible for up to the maximum allowable rebate amounts for e-bikes, e-cargo bikes, and adaptive e-bikes. Rebate amounts will not exceed the total cost of the purchased e-bike. The Town of Eagle is an extremely bike-friendly community, though studies have shown that transportation remains our highest source of GHG emissions. Ensuring everyone in the community has access to e-bikes will help us make progress toward our goal of net-zero GHG emissions by 2030 for the Eagle community, as well as alignment with the state GHG Reduction Roadmap. The \$35,000 award will allow us to test out the program, ensuring it reaches the parts of our community without current access to e-bikes and ensuring those folks can select bikes that will meet their transportation and commuting needs before future expansion of the program.

2. Project Narrative

Rebate Type

The Town of Eagle has selected a post-sale rebate to provide as much choice as possible for our low to moderate income residents. QuietKat is the only e-bike retailer in the Town of Eagle, and they are a participating retailer in the Community Access to Electric Bicycles Rebate Program, providing access to local point-of-sale rebates in regular intervals. The post-sale rebates will ensure residents can purchase the vehicle that works best for them and their household (for example, a folding bike for folks that live on upper floors or in higher density housing). This is intended to bolster the statewide Community Access to Electric Bicycles program by broadening its reach.

Rebate Amounts

Rebate incentives will be offered at the thresholds below, but will not exceed the total purchase price of the e-bike. Rebates will also not cover sales tax.

Low income

- \$2,000 for e-bikes
- \$3,000 for e-cargo bikes
- \$4,000 for adaptive e-bikes

Moderate income

- \$1,000 for e-bikes
- \$2,000 for e-cargo bikes
- \$3,000 for adaptive e-bikes

Rebates will be issued for e-bikes that meet the following criteria.

- Any class of e-bike (per the State of Colorado e-bike definition):
 - Class 1: an electrical assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of 20 mph
 - Class 2: an electrical assisted bicycle equipped with a motor that provides assistance regardless of whether the rider is pedaling but ceases to provide assistance when the bicycle reaches a speed of 20 mph
 - Class 3: an electrical assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of 28 mph

E-bikes must also meet the following criteria:

- Have two or three wheels and fully operable pedals
- Electric motor is 750 watts or less; may not be gasoline-powered
- Full-suspension mountain bikes are not eligible for this rebate
- No minimum purchase price; maximum retail price of \$5,000
- E-Cargo Bike Eligibility

E-Cargo Bike Eligibility

E-cargo bicycles must have an extended frame designed to carry additional people or cargo. E-cargo bikes must meet all of the following criteria:

- Designed to carry one or more passengers in addition to the rider OR designed to carry heavier or bulkier loads than a traditional bicycle can carry
- Has an extended frame (long tail, long john, Bakfiets, or box bike)
- Extended frame has a published cargo load carrying capacity of at least 100 lbs.
- No minimum purchase price; maximum purchase price of \$8,500
- Adaptive E-Bike Eligibility

Adaptive e-bikes are electric bicycles that make cycling and riding a bike easier for the rider based on their individual and specific mobility needs and are for individuals unable to ride a standard e-bike. An adaptive e-bike may:

- Have two or three wheels
- Be a recumbent style e-bike
- Be a standard e-bike that requires modifications
- It is important to consider that not every retailer sells adaptive e-bikes and adaptive e-bikes can be significantly more expensive than standard e-bikes. There is no minimum purchase price; maximum purchase price of \$8,500.

Application Process & Rebate Redemption

The Town will host a page on the website detailing the program and providing an avenue through which to apply. Recipients will need to provide detailed receipts of their e-bike purchase within 90 days of purchase, and the purchase must be made on or after January 1, 2024. Rebates will be limited to one person. Rebates will be offered on a first-come, first-served basis until December 31, 2024 or when funds are depleted, whichever comes first. Rebate checks will be issued within 4-6 weeks of receiving a completed rebate application.

Applicants must be 18 years of age or older. The resident must intend to replace trips otherwise taken by automobile by using an e-bike. There is no rebate for recreational use. Residents will also need to abide by our upcoming e-bike regulations, which are currently in development. The Town will provide educational information on the regulations on the website as well as when issuing the rebate.

Residency & Income Verification

Applicants must prove proof of address within the Town of Eagle. Proof of address can be verified with any of the following documents:

- Current valid Colorado Driver's License or ID
- Computer-generated bill (utility, credit card, doctor, hospital, etc.)
- Printed bank statement
- Pre-printed pay stub (from a period within the last 3 months)
- First-class mail (from a government agency or court)
- Current homeowner's, renter's, or motor vehicle insurance policy
- Mortgage, lease, or rental contract
- Transcript or report card from an accredited school
- Motor vehicle registration
- USPS Change of Address Form CNL107
- DD Form 214

All documents must be dated within one year of application. Individuals who are unable to provide any of these documents to verify physical Town of Eagle address may be eligible to provide alternative documents. If you are unhoused in Colorado and receiving services from a government agency or non-profit organization, a dated letter on the organization's letterhead stating your situation may be accepted in place of one of the above documents.

Income eligibility will be based on the index Area Median Income (AMI) for Eagle County. A chart denoting eligible income levels per household size is below.

- Low-income rebate – household income must be below [80% of the area median income \(AMI\) for Eagle County, linked here](#)
 - For a single income-earner in a 1 person household, you must make \$66,320 or less on an annual basis.
- Moderate-income rebate – household income must be [80%-100% of the area median income \(AMI\) for Eagle County, linked here](#)
 - For a single income-earner in a 1 person household, you must make \$66,321-\$82,900 on an annual basis.

There will be multiple ways for residents to prove their income levels (applicants can choose one of the following):

- 2 most recent paystubs from applicant's current place of employment
- Most recent W2 statements
- Most recent tax return (remove sensitive information)
- Proof of enrollment in any one of the following programs:
 - Social Security Disability Insurance (SSDI)
 - Supplemental Security Income (SSI)
 - If Social Security is the only source of income and individual is not required to file taxes, use form SSA-1099
 - State of Colorado Low-Income-Energy Assistance Program (LEAP)
 - Colorado's Weather Assistance Program (WAP)
 - Xcel Energy's Income Qualified DSM Programs (Line 11 – Adjusted Gross Income is used)
 - Xcel Income-Qualified Community Solar Garden Program
 - Supplemental Nutrition Assistance Program (SNAP)
 - Temporary Assistance for Needy Families (TANF)
 - Medicaid

Prevention of stacking with the State of Colorado e-bike rebate

We will prevent the stacking of the town rebates with the State of Colorado e-bike rebate using a few different methods. Applicants will need to indicate that they have not received, nor do they plan to apply for the state-issued rebate on the application form. Since all of the state-issued rebates are point-of-sale, we can verify purchases by online-only retailers as eligible. There will be a place to designate the purchase place of the e-bike in our e-bike rebate application form, and we will provide a list of rebates issued, and to whom they were issued, to the state each month.

Timeline

We anticipate to post the opportunity and application details on our website no later than January 31st, 2024. The rebate applications will close on December 31st, 2024.

Benefits

This program will benefit the Eagle community by providing access to e-bikes for those who have not historically been able to purchase one due to financial constraints. Eagle is a very bike-friendly community and is known for mountain biking, road biking, and commuting by bike in the summer and even in the winter for a few. E-bikes have surged in popularity over the last two years, prompting the town government to create regulations around their use that promote safe interactions between e-bike users, cyclists, walkers, and those driving automobiles. Though the number of e-bikes in our community has recently increased, there is a significant portion of our population still unable to purchase e-bikes. The purpose of this program is ensure those low to median income folks can benefit from and participate in this mode of transport. The Eagle Town Council adopted a resolution in 2021 for the Eagle community to achieve net-zero GHG emissions by 2030. In 2022, a community-wide GHG inventory was conducted, showing that the Eagle community's largest source of GHG emissions is from transportation. In order to make lasting progress toward this goal, we need to

ensure we are issuing solutions from an equitable mindset, ensuring that initiatives will be realistic for all community members to engage in. This rebate program will allow us to ensure our low-income residents have as much choice as possible in the e-bikes they purchase to get around town and to and from work and that the e-bikes they end up with will be useful into the future, improving their mobility options and contributing to our net zero emissions goal.

Data Collection & Reporting

The program administrator will track each rebate application that comes in, whether or not it's approved, and each issuance of rebate. Details will be compiled and sent to the CEO on a monthly basis. Rebate recipients will also receive regular surveys so we can determine how folks are using their e-bikes and how we might improve our approach in the future. The Town of Eagle is also planning an EV Ride N Drive event in May with Walking Mountains Science Center that will include include e-bikes. We plan to promote this program and invite recipients to share their experience with their e-bikes at that event.

Letter of Support

The Adam Palmer Sustainability Fund, our partner for this rebate program, will be supporting the program through outreach specific to Spanish speakers in the Town of Eagle. This organization was created to galvanize community action toward our 2030 net zero emissions goal. This group has additional funding for translation services and is prioritizing energy and sustainability-focused outreach to low-income residents for 2024. We plan to work closely with them to ensure a cohesive strategy.

3. Project Work Plan

Project Schedule

Project tasks and milestones

Between now and the grant award period, the town plans to work internally to refine the process between rebate application, approval, and issuance. This will be completed before the end of January to ensure ample time for a smooth process. Our sustainability specialist, town clerk, and finance team will need to be involved in the process:

1. Questions will be directed to the sustainability specialist.
2. Rebate applicants will be submitted through the website. The sustainability specialist will monitor and check these every 2 weeks at a minimum.
 - a. The town clerk will ensure information that is posted is in accordance with our obligations to the public.
3. Once the rebate application is approved, the sustainability specialist will place the pertinent information into our payroll process.
4. Finance team will approve invoices for the rebate amounts, and cut and mail checks.

- a. There will be a space to indicate preferred check pickup rather than mail service on the rebate application. Finance and sustainability specialist will work together to effectively communicate with recipients picking up checks in person.

Between notification of award and January 31st, we will develop a webpage specific to the rebates, the application form, and outreach materials for digital channels. Our website provider, CivicPlus, provides easy avenues through which to include new forms and upload attachments with security. We have a monthly community-wide newsletter as well as social media accounts on which the information will be regularly showcased. Application forms will need to be accessible on a mobile device.

Responses to rebate applicants will be issued throughout the process with automated replies, triggered by the application form and workflow, letting applicants know we received their application, and when to expect a response as to the status of their rebate application, and whether or not they will be receiving a rebate based on eligibility.

Monthly data will be collected and sent to the Colorado Energy Office.

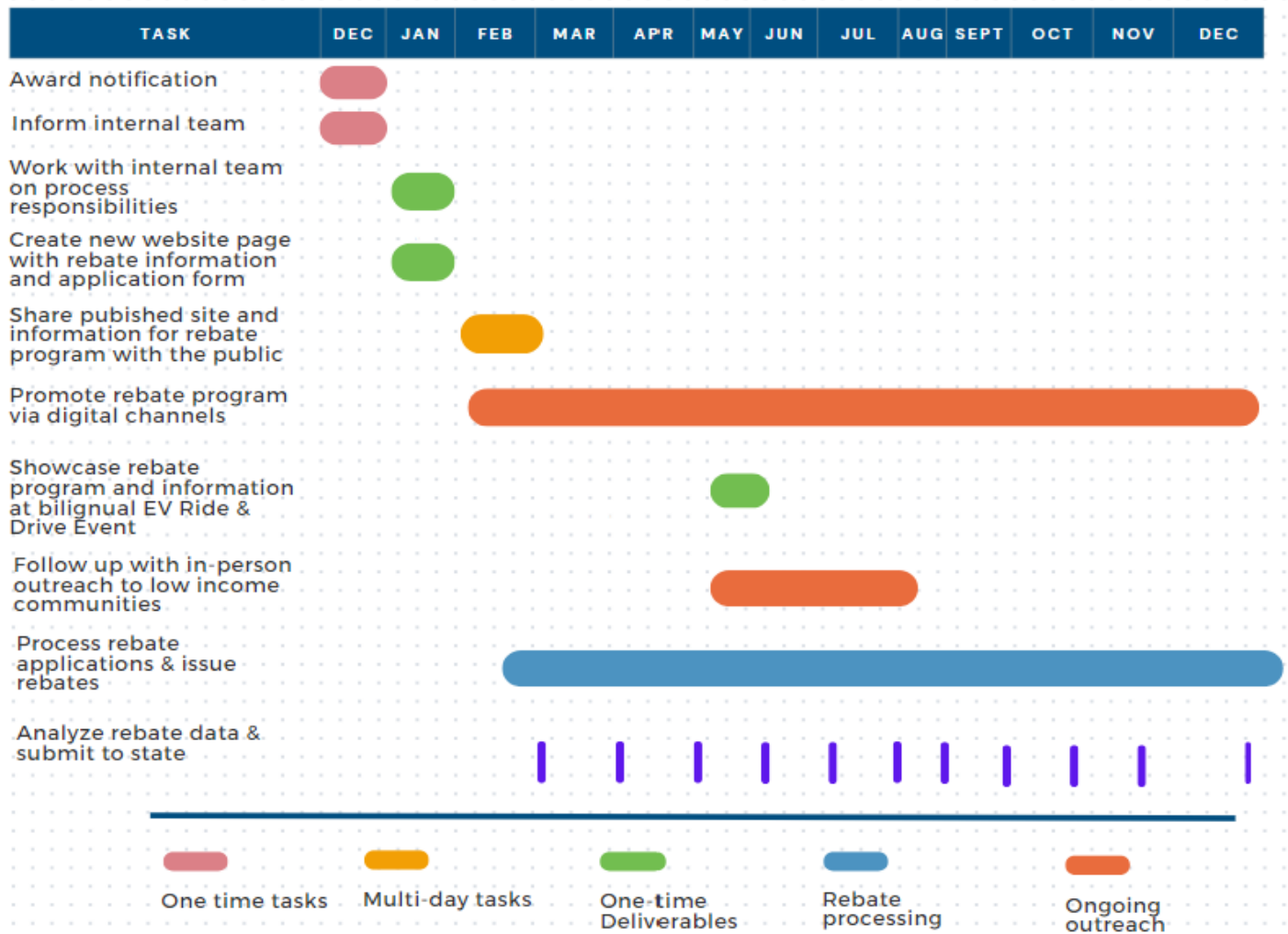
We plan to partner with the Adam Palmer Sustainability fund to conduct outreach in Spanish, as a large portion of our low-income community members speak primarily Spanish. The goal is to tie the outreach efforts to existing events, such as the bilingual EV Ride and Drive event.

Potential risks of the plan include challenges or possible delays in getting the application form on the website. To mitigate this, we can build internal forms and embed them on the website and/or receive applications via email. Other potential risks are the timeline, should we not be ready to launch all promotional materials and the web application by Feb. 1st. If delays do occur, we can push the launch as far as April, though that is not ideal. Most folks do not travel by bike or e-bike until that time, so we don't anticipate getting too many applications before then. Since traveling by e-bike can be more difficult in our mountain climate in the winter, we will target additional outreach for the spring, promoting the program in the months of April and May.

Project Development

Our project development and outreach plan is included below.

TIMELINE PROGRESS - EV REBATE PROGRAM DEC 2023-DEC 2024



4. Project Budget and Narrative

Project Budget

Cost category	Total cost	Further detail	Percent of total budget
Rebate amounts	\$39,850	Total available for low and moderate income rebates	91%
Administrative costs – promotional materials	\$1,000	Printed material for program promotion,	2.3%

		materials for check mailing	
Administrative costs – outreach & marketing conducted by Adam Palmer Sustainability Fund	\$2,900	Labor for outreach Translation services	6.6%
Totals	\$43,750		100%

Budget Narrative

The vast majority of all project costs will go to the rebates themselves, with 91% reserved. The Town of Eagle humbly requests \$35,000 from the state, for which we will provide a 25% match at a value of \$8,750, bringing the total project costs to \$43,750. This amount will allow for a minimum of 10 and a maximum of 38 rebate applications to be processed and issued, depending on how many rebate applications are received for each income and ebike category. Administrative costs are listed to provide the opportunity to create physical promotional materials that will be in both English and Spanish so as to accurately reflect our local demographics. Creating the application form and posting it on the website will be done in-house, as well as rebate processing and issuance.

Below is a breakdown of the funding request and cash match. We have allocated funds for initiatives that will reduce greenhouse gas emissions within the Eagle community for 2024, in accordance with our net zero GHG emissions by 2030 resolution. The \$8,750 would come out of those designated funds for this program.

Funding request	\$35,000
Cash match	\$8,750
Total program budget	\$43,750

5. Organization and Staff Experience

The Town of Eagle is a diverse, inclusive, and unique mountain community surrounded by beautiful recreation destinations. It is a thriving place for families to build a life, and a thrilling landscape for adventurers of every kind. Eagle is located nearly halfway between Denver and Grand Junction. The Town can be accessed by I-70, which runs along the Eagle River. Walking and biking are frequent modes of transportation within the Town, via the expansive trail network. The trails have become a draw to residents and non-residents alike. The Town’s adventurous reputation has started to attract young families seeking an active lifestyle. In fact, Eagle’s population more than doubled between 2000 and 2010. Although Eagle is becoming increasingly popular with tourists, there is a significantly higher percentage of homeowners and single family homes in Eagle than in the County overall, suggesting it is home to more year-round residents than neighboring upvalley Towns. As the Town of Eagle continues to grow, we need to ensure our services reach everyone, and that we are growing with a sustainable mindset. The mayor, Town council members, and employees are committed to maintaining and enhancing the quality of life for everyone in the community. Providing e-bike rebates to income-

qualified residents will achieve just that, ensuring that all benefit from our transition to a net-zero community.

The Adam Palmer Sustainability Fund was created in response to the tragic loss of two Eagle Town Council members who were also sustainability champions, and the loss of a third Eagle local who worked on sustainability initiatives for Eagle County. The mission of the Palmer Fund is to partner with community leaders to achieve net-zero carbon consumption in the Town of Eagle by 2030 through philanthropy, green infrastructure, revolving loans, and grant funding.

Working together with help us to leverage funds and create an e-bike rebate program that lasts beyond the length of this grant period.

The Town of Eagle's finance department and town clerk have collaborated on existing and successful energy efficiency and weatherization rebate programs for town residents and businesses, providing additional funds to support the work Energy Smart Colorado was already doing in our area. Our staff's experience partnering with local organizations to identify needs and inclusion in sustainability rebate programs makes them well-seasoned and ready to deploy this additional rebate program. Our sustainability specialist also has experience supporting rebate programs through past experience working at Walking Mountains Science Center and for Eagle River Water & Sanitation district, both of whom issue sustainability-related rebates.

Exception(s) to State Small Dollar Grant Award Terms and Conditions or State Model Grant Agreement

Small Dollar Grant– Awards under \$250,000

No exceptions.

Model Grant Agreement– Awards over \$250,000

N/A

Conflict of Interest

No conflict of interest.

Debarment and/or Suspension

Town of Eagle is not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency.



To: Mayor and Town Council
From: Larry Pardee, Town Manager
Date: January 9, 2024
Re: Town Manager Report

Economic Development:

On December 27, I participated in the Economic Vitality Community (EVC) meeting, where the focus was on deliberating the priorities and work plans for 2024, specifically on the Economic Development Plan. Staff request was made for the EVC to formulate a 3-year high-level work plan. In response, Nikki Davis has already begun drafting the 3-year plan, which will be shared with Mick Daily for review and presented to the committee on January 18.

In tandem, the town team engaged in discussions with the Regional Resource Center (RRC) to refine the draft further and establish matrices for our economic dashboard. The primary objective was to identify essential database sources crucial to the comprehensive development of the dashboard. This collaborative effort has resulted in valuable insights and recommendations, marking a significant milestone in advancing the completion and launch of our inaugural economic dashboard. The completed Economic Development Plan can be reviewed in the (attached [LINK](#))

Outreach & Meetings: *This report will overview recent participation in community outreach opportunities and regional and project-specific meetings. These events offer valuable opportunities to collaborate with stakeholders, stay informed on the latest developments, and contribute to the local community.*

On Wednesday, December 13, I attended the Eagle Valley Transit Authority board meeting in Avon. The board reviewed and approved their 2024 budget, meeting schedule dates, and locations. The EVTA has scheduled their retreat for January 10 from 9:00 a.m. to 2:00 p.m., which will coincide with their regular monthly Board meeting, so any ordinary business items will be conducted at the outset of the meeting before moving into the retreat.

The retreat location is still to be determined. EVC has secured Greg Bellomo of Government Performance Solutions, whom EVTA worked with in March 2023, to assist EVTA again with this retreat. The retreat objectives are to 1) revisit the interim strategic plan, 2) engage around critical elements of the plan where additional Prioritization/alignment is needed to focus our efforts, and 3) dedicate time to ironing out the foundational elements of our integrated hiring and housing strategy that will allow that initiative to move forward.

On Wednesday, December 27, Blaise Rastello of Ulysses Development Group (UDG) officially communicated to the team that they had received notification from the broker regarding the decision made by the owners of Eagle Villas. Regrettably, the owners offered an alternative offer, ultimately awarding the deal to another group.

A pivotal factor influencing the seller's decision was the proposed timeline for closing. Despite UDG's willingness to expedite the process and utilize internal funds to bridge any financial gaps, taking advantage of

the County's indication of a more efficient timeline, UDG was not allowed to implement these measures. Unfortunately, the broker failed to relay this crucial feedback to UDG before reaching the final decision.

The 2023 Eagle County Front Country Ranger Program year-end summary, which can be reviewed in the (attached [Link](#))

Administration and organization update:

On Friday, December 22, we sent out a retreat survey to hold a day-and-a-half retreat with the Council and staff to begin looking forward to 2024. If the dates presented do not work to have all seven Council members participate, we will find a new set of dates to host our annual retreat.

We recognize the significance of prioritizing and implementing essential Quality of Life goals. The Council has prioritized Grand Avenue, Affordable Housing and Economic Vitality, Sustainability, and Open Space. However, achieving these objectives requires carefully considering fiscal resources drawn from our existing budget or through potential voter-supported funding initiatives.

In our commitment to fostering transparency and community involvement, the Council and staff will collaborate to identify strategies for addressing each goal over the coming months. To facilitate this process, we have engaged Bill Ray's expertise. Bill comes highly recommended, having contributed to similar projects for notable entities such as Eagle Valley Transportation Authority, Eagle County, Mountain Rec, Basalt, Glenwood Springs, and RFTA.

To start our engagement with Bill, I request that each council member schedule an informal meeting with him within the next few weeks. Bill will personally reach out to coordinate a convenient time for you to talk about your vision for our Town. Your valuable insights will help construct a discussion guide, which will be reviewed and further discussed at an upcoming Council meeting on January 23 or February 6. We hope to garner consensus on our approach to the Quality-of-Life goals and explore a possible ballot question in November 2024. That process has specific timelines and deadlines; a good time to start that process is just after the New Year.

As of January 2, 2024, the Town has made good progress in its workforce development initiatives by filling positions from the initial count of eighteen and finishing 2023 with thirty-five filled. The total number of positions, whether presently occupied or pending recruitment, stands at 39 for the year. Significantly, the Town remains actively searching for qualified candidates to fill the remaining seven open positions – pivotal roles crucial to enhancing our community's overall quality of life. The persistent efforts to fill these critical positions underscore our unwavering commitment to cultivating a thriving environment and ensuring our residents' sustained progress and well-being.

We are collaborating with Karah Maloley to formulate the inaugural Town of Eagle Culture Statement. This endeavor involves representatives from various sectors within our organization, ensuring a comprehensive and inclusive perspective. Once the initial draft of the culture statement is complete, we will engage the entire organization in a thorough review and seek input before finalizing the document.

WORK SESSIONS:

To help the Town Council keep track of upcoming work sessions, below is a table of topics to discuss over the next several months. Preparing in advance is helpful since it takes planning to execute a work session. Staff will keep this table in this report and make changes as needed. The topics are subject to change:

Date	Topic
January 2, Work Session	<i>(Meeting Cancelled)</i>
February 6, Work Session	EVC priorities and goals for 2024
March 5, Work Session	

April 2, Work Session	
May 7, Work Session	
Request for Additional Work Sessions	Topic



To: Mayor and Town Council
From: Larry Pardee, Town Manager, and Department Leads
Date: January 9, 2024
Re: Department Updates for December 2023

ASSISTANT TOWN MANAGER

December 2023

Economic Development

- Staff met with Councilmember Grimmer to brainstorm business attraction / retention models, best practice, and potential economic drivers for Eagle.
- Staff attended the Economic Vitality Committee's (EVC) year-end work session to collaboratively discuss 2024 priorities from the Economic Development Plan and implementation priorities. An EVC-Town Council work session is proposed for February.
- Ongoing coordination of the Economic Dashboard with RRC Associates. RRC presented a draft sales tax page for staff review. The initial feedback provided addressed simplifying the design for intuitive functionality, enhanced imagery, and creating a different channel for deeper analysis. An updated demonstration with the EVC is scheduled at their January 18 meeting.
- The Downtown Development Authority (DDA), in partnership with consultant team Downtown Colorado, Inc. (DCI), will be presenting a year-end and 2024 outlook report at the January 23 Town Council meeting.

Housing

- Completed a Sustainability and Housing joint work session with Town Council. Specific to Housing, staff and Council discussed 2024 priorities including policy and implementation. Staff also solicited feedback on a Housing Program approach. A summary of 2024 priorities will be provided to Town Council at a future meeting.
- Staff met with the Valley Home Store (TVHS) and Haymeadow to discuss initial sale of the affordable units within the 7 Hermits phase. This accounts for both the Eagle County subsidized units and the Town's LERP units. TVHS will present a brief update to Town Council on January 9 regarding the launch of their application process. Concurrently, Town staff are evaluating the course in which to advertise and sell the LERP units, as directed by the development agreement and inter-governmental agreement with TVHS.
- Staff hosted a call with The Pike Apartments to negotiate leasing one or two units for Town employees. General pre-leasing information remains to be announced.
- A 90%-complete draft of the updated Local Employee Residency Program (LERP) Guidelines has been circulated internally, with the Town Attorney and TVHS for preliminary review. The draft may be presented to Town Council for a first reading at either the January 23 or February 13 meeting.

Sustainability

- Completed a Sustainability and Housing joint work session with Town Council on Dec. 12th. Specific to Sustainability, staff and council discussed priorities and strategies that can be used to make progress toward the 2028 net zero carbon goal for internal town operations. Town Council determined the budget priorities will be broken down as follows for the 2024 Sustainability Initiatives budget: 75% for strategies/initiatives for internal town operations and 25% for strategies/initiatives for the Eagle community, in accordance with the staggered goal timelines.
- Staff partnered with the Housing & Economic Development Specialist and Walking Mountains to bring information to the DDA about energy efficiency and renewable energy rebates that apply to businesses in Eagle.
- Staff worked with Walking Mountains to refine the scope of work for the town's financial contributions to the 2024 energy efficiency and renewable energy rebates. An overview of how funds were used in 2023 and a preview of the 2024 scope of work will be provided at the Jan. 23rd council meeting.
- Staff met with Vail Honeywagon to discuss the waste diversion reporting requirements within our contract, ensuring both parties clearly understand the data that needs to be collected.
- The compost pail giveaway entry deadline was Dec. 18th. 132 residents entered the giveaway, and 27 out of 41 winners collected their pails. After all pails have been issued, a social norming campaign will be implemented to promote excitement around successful composting.
- Staff worked with the Public Works team, Asst. Town Manager, and Yearout energy to prepare for the Jan. 9th Yearout 90% presentation for town council. This will include information on progress toward the solar array planned for the water/wastewater facility campus, investment grade audit, and energy performance contract.
- Staff applied for the Local Government Community E-Bike Rebate Grant from the state energy office. The state notified the town that they intend to award \$35,000 toward an income-qualified e-bike rebate program, pending the town's formal acceptance.

Communications & Marketing

- Staff continued to engage across departments to ensure community news and updates are sent out. Staff also worked together on initial steps for a Town website refresh which will take place later in 2024.
- Staff began preparing to onboard Jamie as the Communications and Marketing Specialist in January.

Pool Replacement Project

- Staff coordinated with Mountain Recreation to push out information about the pool replacement community survey. The survey closed on December 31st and staff have begun analyzing the data. The joint staffs also worked with the design and construction teams to host a community open house on Thursday December 7th.
- Staff continued regular meetings with the design and construction teams to work on the budget and set deadlines for decisions on the design and prepare to include feedback from the community survey.
- The final grant application for the GOCO Community Impact grant was submitted on December 14th. Award decisions are expected in March.
- Mountain Rec and Town staff will present a more detailed update to the Town Council and Mountain Rec Board in February when the design documents have been completed.

FINANCE DEPARTMENT

December 2023

Administration/Financial:

- **Budget:**

- Certification of the 2024 Mill Levy – This is adopted annual during the first meeting in December and is required to be submitted to the Council by December 15th, however, due to the passage of SB23B-001 in the 2023 Extraordinary Session the assessment calendar has shifted.
 - Assessor certifies final valuation of property to local governments. 01/03/23 (Normal Date 12/10/23)
 - The Town will Certify the 2024 Mill Levy on January 9th (Normal Date 12/15/2023)

The residential assessment rate for all residential property has been lowered from 6.765% to 6.7% for property tax year 2023. The residential property actual value adjustment has been increased from \$15,000 to \$55,000 for tax year 2023. Assessors are required to report SB23-238 property tax revenue reductions separately from the reductions in SB23B-001 because the reimbursed dollars will be coming from different State funds. The revised schedule of final certifications is due to the new code that the Assessor's office will need to write in order to make adjustments in their system.

- Finance continued work on the final budget document with attachments and appendix to be filled with the State by January 31st. Finance is still waiting on a few attachments for the document to be finalized, Council will review at the 2nd meeting in January.

- **Short Term Rentals:**

- STR Active Permits – 22
- STR Closed Permits – 0
- STR Permits in process – 6 new accounts
- Revenue Collection:
 - January and November 2023: \$24,958 (*compared to 2022: \$14,219 – 75.5% increase*)
 - 2022 Total Collection - \$16,675
- Compliance:
 - It was brought to staff's attention by Council member Bodenheimier that there were short term rentals that GovOS had not identified. The Town utilizes GovOS to notify the Town of all short-term rentals available on the market so staff can manage the permitting and lodging tax collection processes.
 - Staff is still working through the missing ads with GovOS. They are waiting for their data scrub this week, then will provide more information. In the meantime, there were 5 new ads we were able to manual identify and I've sent letters to the owners to get their STR registered.

- **Tobacco Tax Collection:**

- Finance publish the tax collection form on the Town website and sent out notices to all vendors requesting the new XBP payment portal be used in the future. The transition from Eagle County to the Town should be fully by the end of February.

- **Year End Transfers:**

- Processed all Year End Budgeted Fund Transfers
- Processed all Year End Combined Cash Transfers

- **West Eagle Review** – Finance met with Community Development to discuss the West Eagle project and fee waiver requests on several occasions to prepare for the January 9th Council meeting.

- **2024 Finance Calendar and Payroll Schedule** Updated and sent out to all staff.
- **Accounts Payable:**

ACCOUNTS PAYABLE: INVOICES PAID							
	2019	2020	2021	2022	2023	VARIANCE FROM PY	
JANUARY	303	205	230	249	285	36	14%
FEBRUARY	254	237	217	254	212	(42)	-17%
MARCH	326	234	247	243	264	21	9%
APRIL	215	137	214	331	259	(72)	-22%
MAY	275	162	260	269	388	119	44%
JUNE	298	221	400	398	290	(108)	-27%
JULY	414	314	239	329	310	(19)	-6%
AUGUST	220	241	243	255	312	57	22%
SEPTEMBER	306	92	218	222	330	108	49%
OCTOBER	296	371	234	301	304	3	1%
NOVEMBER	174	244	299	363	273	(90)	-25%
DECEMBER	387	286	245	258	286	28	11%
Total Invoices	3,468	2,744	3,046	3,472	3,513	41	1%
Annual % Change	-0.83%	-20.88%	11.01%	13.99%	1.18%		

Training:

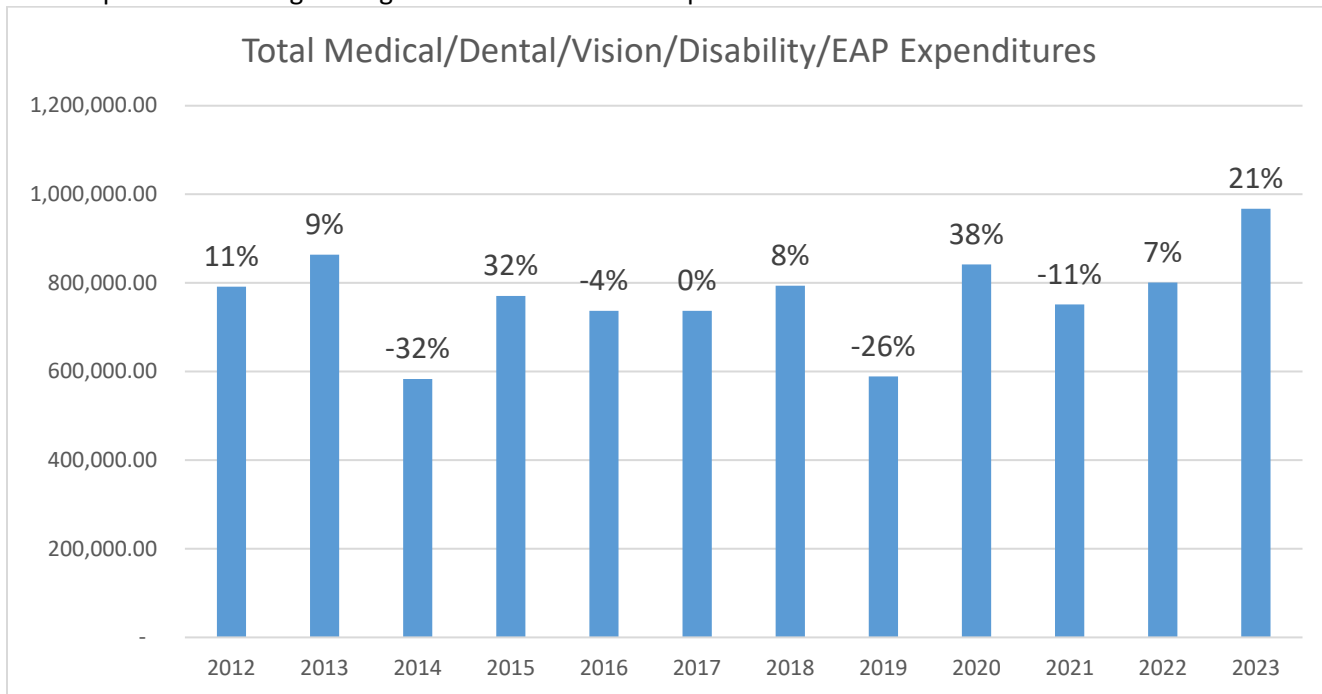
- Caselle Year End Webinars (Jill)
 - Business Licenses Year End (12/11)
 - Accounts Payable Year End (12/12)
 - Payroll Year End (12/13)
 - Affordable Care Act Year End Reporting (12/14)
- Fraud Essentials for CPAs – Continuing Education (Jill 12/8)
- Quarterly Government Alert Updates – Continuing Education (Jill 12/20)
- Audit Documentation – Continuing Education (Jill 12/21)
- Increasing Professional Resilience – Continuing Education (Jill 12/29)
- Delegating to Financial Employees – Continuing Education (Jill 12/30)

Payroll/HR:

- Holiday Bonuses prepared and issued at Holiday Party
- Completed 4th quarter Unemployment Tax Report
- Completed 4th quarter 941 Report
- Started Year-end Payroll Process
- Positions changes in payroll
 - 1 New Hire – Water/Waste Water Operator
 - 6 Terminations:
 - Maintenance Tech - Streets
 - Maintenance Tech – Building & Grounds
 - Refuse/Yardwaste – Seasonal Maintenance Worker
 - Community Development Director
 - Open Space Trails Tech – Seasonal
 - Police Chief

- **Benefits: Year over year total employee Insurance benefit costs to the Town:** *Please note percentages are variances from prior year.*

The Town's Health Insurance expense for 2023 was \$967,121, which is \$166,581 over 2022. The Town changed to a fully insured model in 2021. The Town previously had a partial self-insurance plan which created the potential for large swings based on actual claims paid.



Utilities:

- **December 2023:**
 - Property Transfers – 8 (YTD – 116)
 - New Account Set Up – 2 (YTD – 33)
 - Utility Red Tags – 25 (2023 monthly Average 22.5)
 - Water Shut Offs – 0 (2023 monthly Average 1.17)
- **4 Year Information:**

Year	2023	2022	2021	2020
New Account Set Up	33	51	27	49
Property Transfers	116	168	187	179
Red Tags	270	277	245	187
Shut Offs	14	13	6	2

- **Water Usage and Budget v. Actual:**

Water Usage (In Thousands)								
MONTH	2019	2020	2021	2022	PRIOR 4 YEAR AVERAGE	2023	CHANGE OVER AVERAGE	
DECEMBER	15,503	16,272	13,871	14,847	15,123	15,838	715	5%
TOTAL YTD	368,599	410,352	379,445	361,826	380,056	355,001	(25,055)	-7%

For 2023, water demand ended at 93% of our prior four year average. This appears appropriate based on the level of precipitation received early this year. Our revenues of water sales ended at 99.3% of the budget for in town and 100.01% for out of town water sales.

- Refuse
 - Finance met with Vail Honeywagon Team to discuss customer issues and solutions, billing issues and responsiveness, needed process improvements, dumpster accounts and 2024 rates. A few notable items:
 - No 2024 Rate Increase: Staff was not able to get in touch with Vail Honeywagon prior to finalizing the 2024 fee schedule regarding rates, thus staff increased by 5% per the current contract, however, Vail Honeywagon was amenable to not increasing rates again until 2025 since the lately rate adjustment took place in December.
 - Freezing Lids: Staff and Honeywagon have been receiving complaints about trash can lids freezing. Honeywagon is purchasing lid covers and will be disbursing them to accounts within Old Eagle (excluding the bull pasture), to homes that have alleys and no garages to store cans.
 - Finance met with Kira, our Sustainability Coordinator, to discuss the Refuse Contract and waste diversion reporting requirements.

**Town Council Department
Budget to Actual:**

TOWN OF EAGLE
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 12 MONTHS ENDING DECEMBER 31, 2023

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>TOWN COUNCIL</u>					
10-49-110 SALARIES & WAGES	3,800.00	44,600.00	45,600.00	1,000.00	97.8
10-49-142 WORKERS COMPENSATION	.00	46.89	59.00	12.11	79.5
10-49-143 HEALTH & INSURANCE BENEFITS	.00	.00	168.00	168.00	.0
10-49-144 FICA - EMPLOYER'S	290.70	3,411.91	3,488.00	76.09	97.8
10-49-210 OFFICE SUPPLIES	7.00	42.00	.00	42.00	.0
10-49-225 UNIFORMS	.00	.00	300.00	300.00	.0
10-49-320 LEGAL NOTICES	.00	252.17	500.00	247.83	50.4
10-49-347 PROFESSIONAL SERVICES	.00	.00	9,000.00	9,000.00	.0
10-49-351 LEGAL - GENERAL	.00	61.50	100.00	38.50	61.5
10-49-371 TRAVEL EXPENSE	.00	.00	2,900.00	2,900.00	.0
10-49-372 MEETING EXPENSE	.00	3,437.63	5,250.00	1,812.37	65.5
10-49-380 TUITION & BOOKS	.00	958.67	2,600.00	1,641.33	36.9
10-49-450 SPECIAL COUNCIL FUNDING	5,432.00	96,158.02	141,500.00	45,341.98	68.0
10-49-510 INSURANCE	.00	276.66	831.00	554.34	33.3
10-49-915 COMMUNITY REQUESTS	.00	44,750.00	50,000.00	5,250.00	89.5
TOTAL TOWN COUNCIL	9,529.70	193,995.45	262,296.00	68,300.55	74.0

** This report includes invoices received/paid as of 12/29/23, additional 2023 invoices will be received and paid for over the next two months, the \$63,300 of unexpended funds will be reduced.*

SPECIAL EVENTS & MARKETING

December 2023

Marketing & Events Advisory Committee (MEAC)

- Discussion on possibly broadening parameters of the committee to include Arts & Culture.
 - Marketing, Events, Arts & Culture (MEAC)
- January we will discuss opportunities and processes of creating a new initiative.

MARKETING & COMMUNICATIONS

- Website refresh for townofeagle.org. Adding two new header pages for Broadband and PD
- Social Media posts on Facebook and @EagleOutside
- Collaborate on production of Eagle TODAY & Eagle SPIRIT
- Maintain EagleOutside.com with calendar updates and photography
- Monthly Communications Committee
- Monthly Green Team Meeting

MEETINGS

- Employee Holiday Party
- Information Center performance evaluations for Pat Prill and Eileen Davis.
- Holiday Lighting Contest
- Andy Clark regarding the late start to the ice rink, due to weather.
- George Wilson with Battle Mountain High School to discuss Rocky Mountain Pond Hockey Championships.

UPCOMING EVENTS

JANUARY 2024	
January 6	12 th Night Tree Burning
FEBRUARY 2024	
February 9	Murder on Broadway
February 9 – 11	Porchlight Players – Young Frankenstein
February 9 – 11	Porchlight Players – Young Frankenstein

HUMAN RESOURCES

December 2023

Benefits

- Administering 6 FMLA/MLA claims
- Managing Open Enrollment Benefit changes

Compensation

- Working with Admin and Finance to finalize compensation budget for 2024

Risk Management, Safety and Work Comp

- Managing 8 General Liability & PC Open claims, 2023 total claims = 15
- Working on 2 property damage restitution claims
- Managing 3 Work Comp Claims, 2023 total claims = 4

Recruiting – Onboarding

- Interviewed and hired Town Engineer starts 01/08/24
- New Hire Orientation Meetings held for 4 new hires, 1 new Council member and 2 new P & Z members
 - 2023 started with a total of 18 total open positions, increased to 44 on 12/14
 - 37 full-time open positions, (8 of those positions carried over from the 2022 budget)
 - 2 Temporary-Interim Positions
 - 5 seasonal positions (3 - B & G, 1 - Open space, 1 - Refuse/Yard Waste)
 - 4 positions currently in progress
 - Police Chief
 - Water Operator
 - PW Inspector
 - Community Development Director
 - 2023 Filled 37 positions as of 12/28, (in 2022 - 25 positions were filled)
 - 2024 starts out with 9 open positions plus 5 seasonal positions to recruit for.

HR Administration, Training, Translation Assistance

- Annual Performance Evaluation Process in progress, drafting merit increase spreadsheets
- Year End Compliance items for Work Comp Cost Containment and ACA reporting

COMMUNITY DEVELOPMENT

December 2023

LONG RANGE PLANNING

ReCode Eagle – The Land Use and Development Code (LUDC)

- Staff is preparing application forms and checklists, updating the fee schedule, and addressing other various administrative tasks.
- Municode upload to be completed in early 2024. The previous version of the Land Use and Development code will still be available to the public as an archived version.
- The new ReCode available here: [Land Use and Development Code Effective 10/23/2023 | Town of Eagle, CO - Official Website](#)

LAND USE APPLICATIONS IN PROGRESS

For more information and to access project documents, visit the Town's [Active Land Use Applications Page](#).

- **AN23-01: West Eagle Housing**
 - The project consists of 9.5 acres and 113 units within 23 buildings. Applications include annexation, zoning, major development permit, special use permit and subdivision. Applicants are applying for RMF zoning with special use permit for higher density. Proposed lot area/dwelling unit is 3,278 SF, which is ~13.3 units/acre
 - Application is complete and out for referral agency comment.
 - No public hearings scheduled.
- **PUDA23-01: Haymeadow Major PUD Amendment**
 - This Project is a Major PUD Amendment within the Haymeadow development to:
 - Reverse the RMF-5 land swap;
 - Update the intended alignment of the extension of Sylvan Lake Rd
 - Update the conceptual/development plan
 - Revise the PUD Guide to align with ReCode and current best practices.
- **HYMD23-05: Haymeadow ADA Amendment**
 - This application consists of a focused update to Haymeadow's Annexation and Development Agreement, more information will be provided in the next update.
- **AN23-02 Annexation/RZ23-02/PUD Plan 23-01 PUD Zoning Plan: North Broadway**
 - Low income and for-sale housing with limited commercial new development that includes: 1) Annexation and initial zoning of 2.248 acres of the Ping Lane parcel and 1.193 acres of the Brooks Lane parcel to HD/C-PUD; 2) Rezone of 9.236 acres of the Ping Lane parcel from Rural Residential to Planned Unit Development and 4.296 acres of the Brooks Lane parcel from Mobile Home Park/Planned Unit Development (MHP/PUD) to Planned Unit Development; and 3) PUD Zoning Plan for the entire property utilizing the newly adopted CMU-1 zone district as the underlying framework.
 - Project Location: 101 Ping Lane and 404 Brooks Lane properties located north of Eagle's Central Business District between the railroad and the Eagle River.
 - Application has not been deemed complete
 - Public Hearing Schedule: None

ADDITIONAL UPDATES:

There are currently no additional updates.

MAJOR CONSTRUCTION PROJECTS

Business Name	Location	Status
Second Street Tavern	127 W Second St.	TCO is now expired. Awaiting response from owner for moving section of fence from ROW and encroachment agreement is awaiting finalization. Communication between applicant and Com Dev has been unproductive. All associated applications and permits will move under the purview of the Code Enforcement Department after January 12, 2024, including the fence encroachment, sign permit and TCO.
Foodsmith	318 Broadway	Working toward building final *Noteworthy: Retail food sales & cooking class.
Eby Creek Apts.	435 Eby Creek	TCO issuance in progress.
Hockett Gulch Apts.	16186 Hwy 6	Trailhead restroom - Shaw resubmitted revising cost comparison. Forwarded Community Development department's request for color rendering of restroom for TOE Packet. Development Agreement revision with Kendra for drafting, revision will adjust deadlines for Grand Ave. entrance and irrigation system items. Back to Kendra for adjustment, Town needs to confirm time frames for task completion. Drywall in Building 2 and Clubhouse complete. Building 1 has started drywall stage at upper levels.
410 Broadway Project	410 Broadway	TCO issued and occupancy of dwelling units in progress.
City Market Remodel	0103 Market St	Interior work completed. Parking lot improvements (re-configuration) still pending.
Haymeadow	91 Mountain Hope Circle	Foundations for last two buildings pending and framing of five buildings in progress. First building sheetrocked and interior finish in progress. Continued work needed on Conditions of Approval / tracking of COA's
Habitat for Humanity	3 rd Street	All building permits issued and foundation work in progress
Slope and Hatch	115 East Second St Unit 1	Construction work commenced. Sign Permit issued.
High Country Hearth Showroom	115 East Second St Unit 4	Permit issued. Work in progress.
Desmond Builders Office	410 Broadway South Unit	TCO issued
C&C Plumbing and Mechanical	82 Chambers Ave	Both buildings under construction

The figures below show general activity levels not broken down by permit type (building, electrical, plumbing, mechanical, etc.)

TYPE OF WORK PERFORMED	EOY 2022	YTD 2023
Inspections (n/i Planning, Public Works)	1,308	1,885
Permits Processed	465	411

TOWN COUNCIL AND PLANNING & ZONING COMMISSION MEETING SCHEDULE:

P&Z and Council Meeting Schedule

December 2023
December 5 th (Planning Commission) – Cancelled No Meeting
December 12 th (Town Council) - DR23-04 263 Sawatch Major Development Permit - P&Z Appointment
December 19 th (Planning Commission) - DR23-01 Stone Concepts Minor Development Permit- Approved - Oaths of Jennifer Sturgeon and Laura Hartman
December 26 th (Town Council) No Meeting
January 2024
January 2 nd (Planning Commission) – Cancelled
January 9 th (Town Council)
January 16 th (Planning Commission) - Cancelled
January 23 rd (Town Council)
February 2023
February 6 th (Planning Commission)
February 13 th (Town Council)
February 20 th (Planning Commission) Haymeadow Major PUD Amendment
February 27 th (Town Council)

EAGLE POLICE DEPARTMENT

December 2023

2023 December Calls for Service: 785
2023 January-December: 11,823

2022 November Calls for Service: 1,012
2022 January-December: 12,972

<i>Agency Assist – 7</i>	<i>Harassment – 8</i>
<i>Assault -- 3</i>	<i>Juvenile/Family Incident -- 3</i>
<i>Burglary – 0</i>	<i>Missing/Recovered * Juvenile – <u>0</u> Adult- 1</i>
<i>Burglary False Alarm – 4</i>	<i>Motor Vehicle Crash/Assist – 20</i>
<i>Child Abuse Investigations -- 1</i>	<i>Narcotics -- 0</i>
<i>Citizen Assist – 19</i>	<i>Noise – 4</i>
<i>Civil –8</i>	<i>Parking problem/violation – 84</i>
<i>Code Violation -- 1</i>	<i>Protection Order Violation -- 1</i>
<i>Damage/Vandalism – 4</i>	<i>Sex Assault -- 0</i>
<i>Death -- 1</i>	<i>Misconduct Investigations -- 0</i>
<i>Disturbance – 5</i>	<i>Sex Offender Check/Registration -- 8</i>
<i>Dogs Leash, Welfare or Noise (EPD and not A.C.) -</i>	<i>SRO Related – 7</i>
<i>- 3</i>	<i>Suicidal/Welfare – 11</i>
<i>DUI/D -- 1</i>	<i>Suspicious Person/Vehicle/Occurrence – 26</i>
<i>DUR -- 3</i>	<i>Theft – 6</i>
<i>F or M Menace/Assault/Weapons- 1</i>	<i>Trespassing -- 4</i>
<i>Fire/Medical – 4</i>	<i>Warrant Arrest – 0</i>
<i>Fraud – 4</i>	<i>Wildlife Animal -- 3</i>

We had a blast at this year's Shop with a Cop! We were honored to spend the evening shopping with local students at Walmart followed by delicious food, gift wrapping and a special visit from Santa himself at 4 Eagle Ranch. This year, we were able to sponsor 11 local kids. Thank you to our many community partners and volunteers who helped make this night so special for some very deserving kids. Separately, we were able to sponsor a local family for the holidays.

Officer Stahl attended a week-long Field Training Officer (FTO) training. This certification allows him to train new officers with our department, adding to our group of experienced FTOs.

Winter is here! Officer Scriver and Code Enforcement Officer Delp spent time leaving winter parking enforcement reminder fliers in the Village Homes, where parking restrictions apply during winter storms. Sgt. Rich and Officer Sanders also went door to door to give friendly reminders and provide education on these parking restrictions.

Sgt. Causey, Officer Westering, Officer Sanders and Code Enforcement Officer Delp decorated one of the patrol cars with lights to participate in this year's Christmas on Broadway parade.

We gathered to celebrate Chief Derek Bos' contributions to the Town of Eagle during this past year and wish him well on his next adventure in Juneau, Alaska. Lieutenant Carrie Buhlman has been appointed as our Interim Chief of Police.

After a competitive process to appoint two more patrol sergeants to our department, Officers Westering and Suehrstedt were selected. They will assume their Sergeant positions effective January 13th. Please join us in congratulating these two gentlemen as they continue to serve our community.

We'd like to welcome Ryan Larson, who is joining our team as a Patrol Officer, on January 2nd.

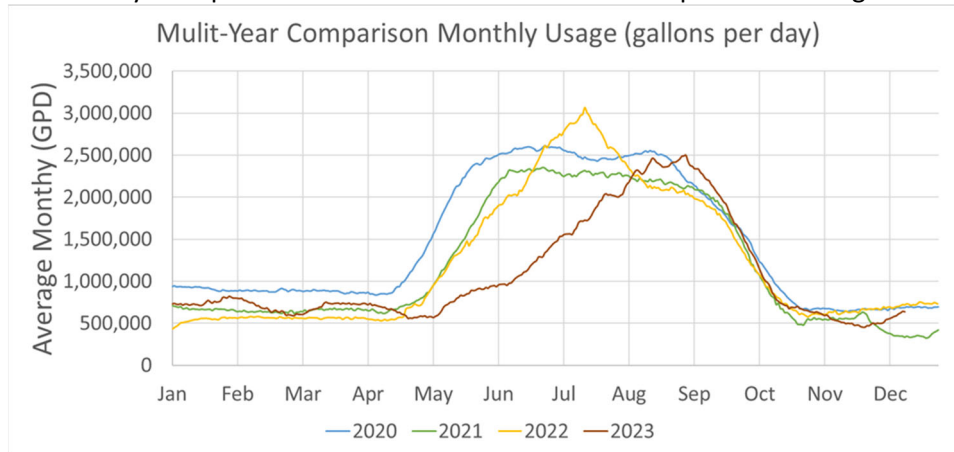
MUNICIPAL COURT		December Statement	
Court held December 6th & 20th			
Citations Issued	Current	YTD	2022
Animal Control	10	109	61
Juvenile	0	16	21
Misdemeanor/Ordinance	0	9	12
Parking	18	175	147
Traffic	5	119	215
Total	33	428	456
Fines and Fees Collected	Current	YTD	2022
(includes collections for previous months)			
Court Costs	\$ 150.00	\$ 1,135.00	\$ 1,470.00
Criminal Police Equipment and Training Surcharge	\$ 60.00	\$ 510.00	\$ 410.00
Traffic Surcharge	\$ 200.00	\$ 2,830.00	\$ 3,380.00
Deferred Judgment Fee	\$ -	\$ -	\$ 375.00
Fines	\$ 2,290.00	\$26,032.50	\$32,062.50
Outstanding Judgement Fee	\$ -	\$ -	\$ 30.00
Stay of Execution Fee	\$ -	\$ 145.00	\$ 65.00
Bad Check Fee	\$ -	\$ 25.00	\$ -
Warrant Fee	\$ -	\$ 100.00	\$ 66.67
Failure to Appear	\$ -	\$ 3,140.00	\$ 2,893.33
Victim Restitution Fee	\$ 227.00	\$ 1,059.31	\$ -
Total	\$ 2,927.00	\$34,976.81	\$40,752.50
Dispositions (Payments or Court Appearances)	Current	YTD	2022
Animal Control	8	109	40
Juvenile	1	19	20
Misdemeanor/Ordinance	1	8	6
Parking	14	171	172
Traffic	8	128	184
Total	32	435	422
Outstanding Fines and Fees At Collections & by Date			
Current	\$ 685.00		
1-30 Days Past Due	\$ 400.00		
31-60 Days Past Due	\$ 630.00		
61-90 Days Past Due	\$ 1,505.00		
91-180 Days Past Due	\$16,245.47	**At Collections	
Total	\$19,465.47		

Public Works

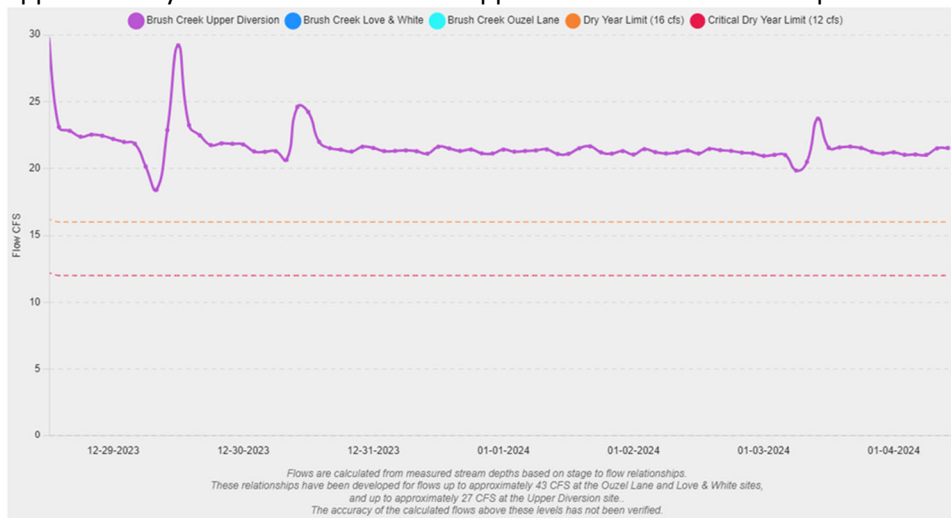
December 2023

Water (Stephen Wilson, Utilities Manager)

- In 2023 water utility staff received 3 Water Operator D, and 1 Distribution III Certification.
- Weekly water production has between 0.5 and 0.7 million gallons per day (MGD) in December. This tracks consistently with production in December of 2022 and equates to a usage of 80 gallons per person of day per.



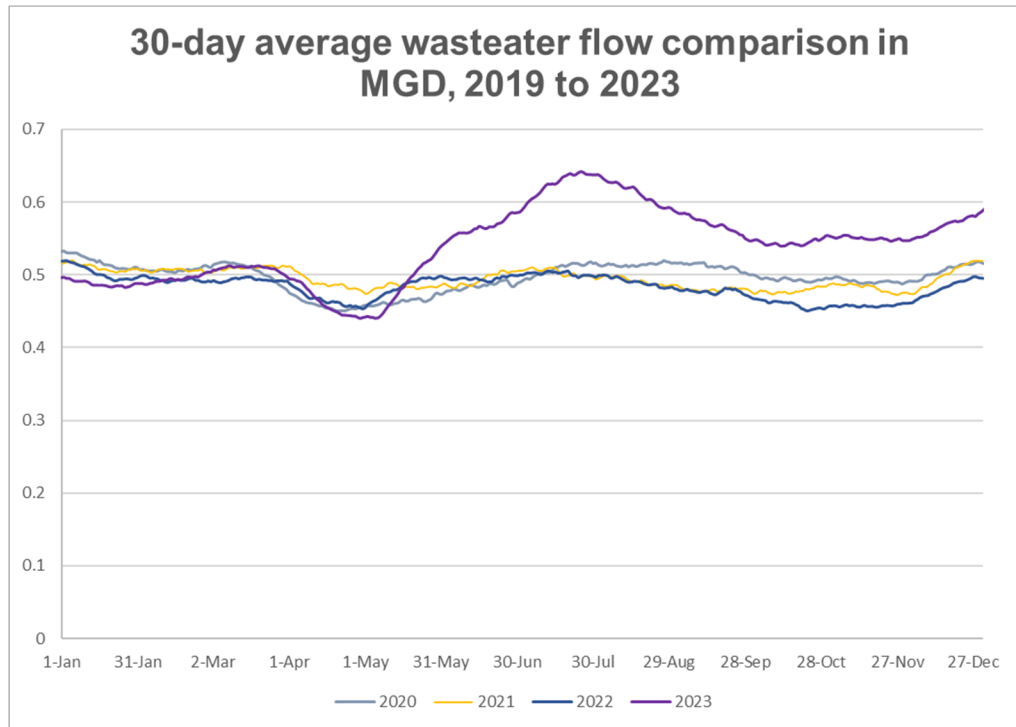
- Brush Creek was flowing at approximately 23 CFS at the upper diversion point week. This site is located approximately 0.25 miles south of the upper basin water treatment plant.



- East Eagle Tank: Geotechnical and survey field work have been completed prior to winter. Preliminary design for the water storage tank design can now start.
- 2 MG storage tank at the Upper Basin Water Treatment Plant and 1 MG Lower Eby Creek Tank: Two viable alternatives for the Lower Eby Creek tank site have been identified for further development. A preliminary design memo has been submitted to CDPHE for a temporary operating strategy during the 2 MG tank rehab.
- Cemetery tank replacement design is on-going and has been submitted for CDPHE for review and approval.
- We are beginning a hydraulic engineering analysis associated with the West Eagle development to identify utility improvements needed to serve the development.

Wastewater (Stephen Wilson, Utilities Manager)

- In 2023 utility staff received 3 Wastewater Operator D, 1 Wastewater Operator B, and 1 Collection III Certification.



- Collection system repair identified from the 2023 survey work is being contracted and scheduled.
- Fat Oil and Grease (FOG) program: The Town’s vendor has sent letters to businesses in the program during 2023. Staff are working with customers during 2024 for education on best practices and inspections.
- We are still waiting for the State to release a final permit modification No. 1. We have been working with our consulting engineers to study how to best comply with the future regulations.
- Wastewater Treatment Facility: The preliminary design has begun for improvements to the facility. The initial design points have been identified and selected along with a control strategy. The control strategy selected is intended to reduce the total air needed for treatment and improve operability.

Open Space & Trails (Brian Lieberman, Open Space & Trails Manager)

- Seasonal Trail and Open Space Closures Signage – Town of Eagle wildlife closures went into effect on December
 - New signage was installed at most trailhead kiosks to help with messaging. The signs cover the maps and summer information with a sign that says: “Seasonal Wildlife Closure Currently in Effect.”
 - New Respect the Wild signs have also been installed in historical conflict areas and those open for recreation in the winter.
 - VVMTA’s new staff person was out at trailheads educating recreationists about trail closures and responsible recreation.
 - In addition, the Town continues to get messaging out about responsible recreation and trail closures on social media, Eagle Today, and other outreach methods.



Everyone loves a good nap. When deer, elk, and bighorn sheep aren't searching for food, they bed down in safe spaces to rest and preserve calories. A dog off a leash or a human getting a bit too close can spook an animal out of its warm bed, requiring them to use valuable energy and make them vulnerable to the elements.

- Open Space Management Plans- Staff worked with ERO to finalize deliverables from the Management Plan project. The final plans will be posted on the website shortly. Staff are also working on developing work plans that will prioritize annual operational and capital projects.
 - Staff is engaging a stream restoration firm to start planning a restoration project in 2024.
- Hardscrabble Area Management Meeting – Town staff met with the Bureau of Land Management and the US Forest Service to discuss management in the Hardscrabble area. The partners discussed motorized and mechanized travel and seasonal use restriction consistencies. The partners would like to meet more often to discuss ongoing management.
- Eagle County Wildlife Roundtable- Town staff attended the December Eagle County Wildlife Roundtable meeting in December. The roundtable has prioritized the Eagle area as an important region for investment in wildlife habitat. The Committee will be considering projects/ actions that could be suggested and implemented to improve wildlife habitat in the area.

Streets (Kevin Fontana, Public Works Operations Manager)

- Had several light poles and signs were damaged during the last storm. Working to get them all replaced.
- Snow clean-up has been going on for the last week. Cleared snow and ice from Broadway Parking areas.
- CAT was able to work onsite and make repairs to both wheel loaders. We are happy to have those back in operation condition as they are a big part of our snow removal process.

Building & Grounds (Kevin Fontana, Public Works Operations Manager)

- The heating system at the pavilion is down. Working with HVAC Company to get that back up and going.
- A new Communication system was installed for the rooftop units at the Town Hall by Trane.
- Trane will be returning in January for system training with Public Works and Big Kev.
- New starters are in place on the Info Center Grinder pumps. Those restrooms have been reopened.

Engineering (Tom Gosiorowski, Public Works Director & Martha Miller, Project Manager)

- Eby Creek Road Sidewalk – Sidewalk and pedestrian crossing is complete.
- Sylvan Lake Road – Staff is working on a 30% design. The design includes a new sidewalk between MacDonald and Capitol Streets and intersection improvements at Capitol Street and Eagle Ranch Road. Staff will schedule an Open House in late winter.
- Grand Avenue Corridor – Staff received and reviewed the draft Traffic Report, the preliminary 2D roadway design, and access recommendations. It is a complex corridor with many constraints. 1:1 access meetings are scheduled for January 16th-17th. Staff is working on balancing the traffic recommendations, roadway design and access points. KLJ will prepare a RAISE grant for the corridor. Applications are due Feb. 28th. Staff are working with FHWA on the SS4A Action grant including the financial agreement and publishing an RFP for the work. The financial agreement and RFP advertisement will run concurrently.
- Howard & 4th Street – Staff will have a 90% design prepared in early March. Staff were able to address the public comments received in October regarding driving speeds, bike corridor, drainage problems, and utility service lines. Another Open House will be scheduled in the late winter/early spring. Note, there was strong opposition to the Shared Bike Lane concept; therefore, staff has decided not to stripe the center lane. Also, there were numerous requests for speed bumps. Rather than speed bumps, traffic calming features such as narrow lanes will be used.
- Pavement Management Study – Staff working with IMS (Infrastructure Management Services) on getting a final report.

TOWN CLERK

December 2023

Communication Committee (*M. Furtado, M. Herota, S. Wilson, B. Lieberman, D. Cardoza, J. Rakow, M. Daruna, K. Koppel, R. Goebel*)

EAGLE SPIRIT EMPLOYEE NEWSLETTER: Sent December 28, 2023 (*N. Davis + staff*)

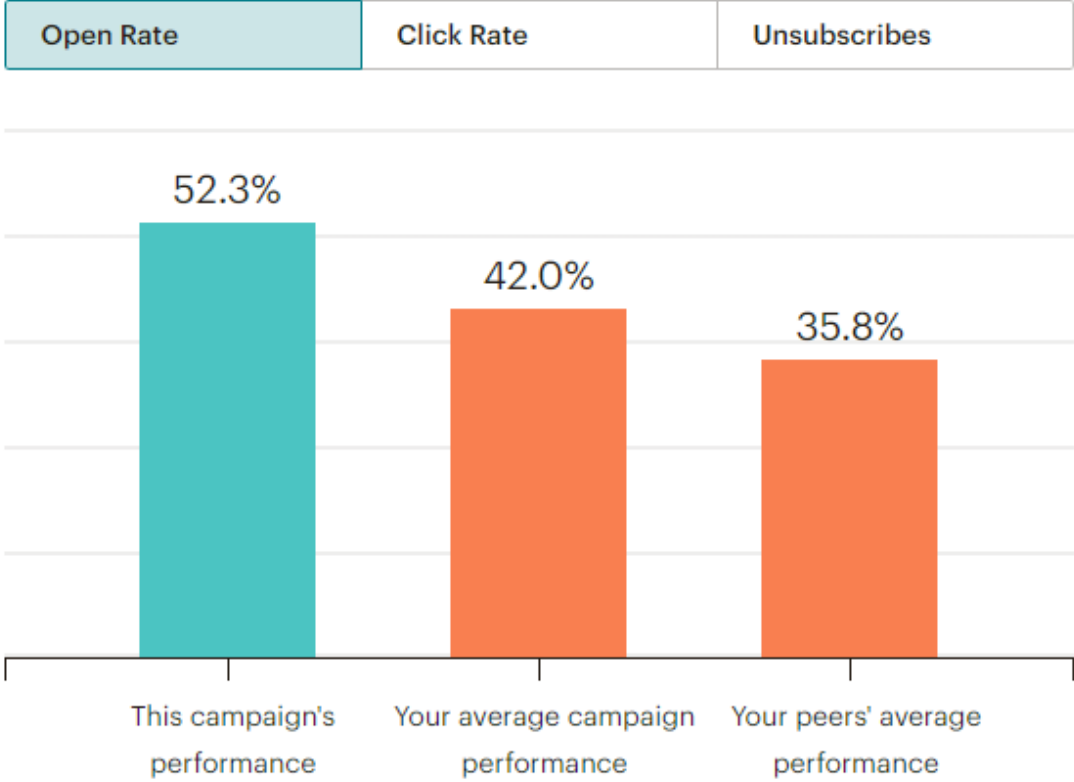
EAGLE TODAY: December 28, 2023 –2,899 Recipients



IN THIS EDITION:

- Town Offices Closed for Holidays
- Twelfth Night Jan. 6th 🏠 🏠
- [Eagle Pool Replacement Community Survey](#)
- Seasonal Wildlife Closures
- Extra Trash Pick-up Requests
- [Residential Broadband](#)
- [Open Town Staff Positions](#)
- See Something Say Something
- [Ask the Town](#) 🗣️ ?

How your email campaign compares



Top links clicked

https://www.townofeagle.org/Jobs.aspx	76
https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmountainrec...	58
https://mountainrec.org/wp-content/uploads/2023/12/231207_Eagle-Pool_Outreac...	55
https://townofeagle.org/FormCenter/Utilities-9/Internet-Signup-and-Availability-73	36
https://www.surveymonkey.com/r/J2R9CLW	33

November Website News Flash Topics/Posts (See Hootsuite report for Social Media posts)

EAGLE NEWS

Stay Updated on the Latest Town Updates

- Eagle Pool Update
- Seasonal Wildlife Closures
- 2023 Community Impact Award Winners
- Terrace Park Community Feedback
- 2024 Business License Renewals
- Town of Eagle Community Energy Efficiency Program
- Eagle Economic Development Plan
- Extra Trash Pickup Requests

Ask the Town



1. Utility Inquiry
2. Town Recycle Inquiry at Brush Creek Village Townhomes
3. Utility Inquiry

Records Requests

2018	2019	2020	2021	2022	2023
16	13	16	30	41	32

**Various Town Departments respond to Records Requests*

Licensing

- 2024 Business License Renewal notices were sent on December 27th and are due before March 31st.
- Liquor License 2023 Revenue: \$13,257.50 – Budget \$8,555.00
 - The Back Bowl Renewal
 - Your Father's Office Renewal
 - Real Jalisco Renewal
- Marijuana – no activity; all renewals complete for 2023
- Tobacco – no activity; all renewals complete for 2023

Training/Meetings

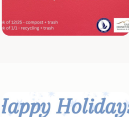
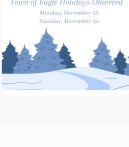
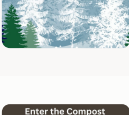
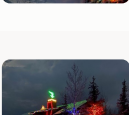
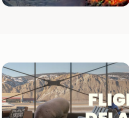
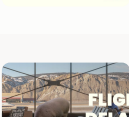
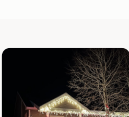
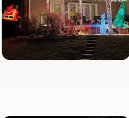
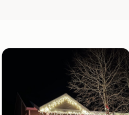
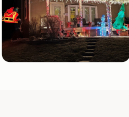
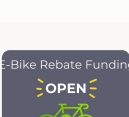
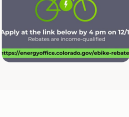
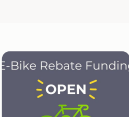
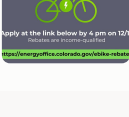
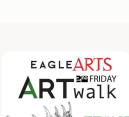
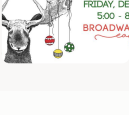
- Employee Holiday Party – December 6
- CivicPlus Website Redesign – December 11 & 12
- RRC Associates Dashboard Review – December 13
- Communications Committee – December 14
- Chief Bos Farewell – December 20
- Staff Holiday Exchange – December 21

Post performance - Facebook Pages

Data from 01 Dec, 2023 to 31 Dec, 2023

Sources

-  Eagle Outside
-  Town of Eagle, CO

DATE ▼	POST	AUTHOR	COMMENTS	ENGAGED USE...	ENGAGEMENT ...	REACH	REACTIONS	SHARES	VIDEO VIEWS
 Town of Eagle, CO Dec 28, 19:00	 Town of Eagle administrative offices will be closed on Friday, December 29 and Monday, January 1! Happy New Year!	Town of Eagle		0	0	0%	251	0	0
 Eagle Outside Dec 28, 19:00	 Town of Eagle administrative offices will be closed on Friday, December 29 and Monday, January 1! Happy New Year!	Town of Eagle		0	5	2.16%	232	5	0
 Town of Eagle, CO Dec 27, 14:01	 12th Night Tree Burning Saturday, January 6 6 PM Bull Pasture Park 🌲 Please drop your tree in the designated area, at Bull Pasture Park, starting December 25th.	Town of Eagle		0	11	1.31%	838	5	2
 Eagle Outside Dec 27, 14:00	 12th Night Tree Burning Saturday, January 6 6 PM Bull Pasture Park 🌲 Please drop your tree in the designated area, at Bull Pasture Park, starting December 25th.	Town of Eagle		0	2	0.84%	239	2	0
 Town of Eagle, CO Dec 26, 14:01	 (Post with no description)	Town of Eagle		2	12	2.95%	407	4	0
 Eagle Outside Dec 26, 14:00	 (Post with no description)	Town of Eagle		0	0	0%	187	0	0
 Town of Eagle, CO Dec 23, 20:00	 Trash service will be delayed next week due to the holidays. Please place your bins out 1 day later than your usual schedule. Happy Holidays!	Town of Eagle		2	21	2.4%	876	8	1
 Eagle Outside Dec 23, 20:00	 Trash service will be delayed next week due to the holidays. Please place your bins out 1 day later than your usual schedule. Happy Holidays!	Town of Eagle		0	1	0.28%	355	1	0
 Town of Eagle, CO Dec 22, 19:01	 Town of Eagle administrative offices will be closed on Monday, December 25 and Tuesday, December 26. Happy Holidays!	Town of Eagle		0	4	1.52%	263	3	0
 Eagle Outside Dec 22, 19:00	 Town of Eagle administrative offices will be closed on Monday, December 25 and Tuesday, December 26. Happy Holidays!	Town of Eagle		0	0	0%	160	0	0
 Town of Eagle, CO Dec 20, 14:02	 12th Night Tree Burning Saturday, January 6 6 PM Bull Pasture Park 🌲 Please drop your tree in the designated area, at Bull Pasture Park, starting December 25th.	Town of Eagle		2	43	3.77%	1,141	15	4
 Eagle Outside Dec 20, 14:00	 12th Night Tree Burning Saturday, January 6 6 PM Bull Pasture Park 🌲 Please drop your tree in the designated area, at Bull Pasture Park, starting December 25th.	Town of Eagle		0	13	2.77%	470	4	1
 Town of Eagle, CO Dec 18, 13:01	 Today is the last day to enter the compost pail giveaway! Winners will be contacted this week. Thanks for participating! https://rcv.microsoft.com/S2/cv/FHSRq	Town of Eagle		0	7	1.78%	393	0	0
 Eagle Outside Dec 18, 13:00	 Today is the last day to enter the compost pail giveaway! Winners will be contacted by Friday, Dec. 22nd. Thanks for participating!	Town of Eagle		0	1	0.39%	258	0	0
 Town of Eagle, CO Dec 15, 13:01	 Last day to enter the holiday lighting contest! Photo of last year's 1st Place Winner and Most Clark Griswold award! Entry form on eagleoutside.com/events	Town of Eagle		0	28	4.57%	613	5	0
 Eagle Outside Dec 15, 13:00	 Last day to enter the holiday lighting contest! Photo of last year's 1st Place Winner and Most Clark Griswold award! Entry form on eagleoutside.com/events	Town of Eagle		1	7	2.03%	344	2	0
 Town of Eagle, CO Dec 14, 17:01	 Respect trail closures. Ignoring them can block migration corridors. You can hike & bike on Bellyache Rd, Boneyard, Redneck Ridge and Haymaker (1st & 2nd loops) #respectthewild	Town of Eagle		0	15	2.98%	504	7	2
 Eagle Outside Dec 14, 17:00	 Respect trail closures. Ignoring them can block migration corridors. You can hike & bike on Bellyache Rd, Boneyard, Redneck Ridge and Haymaker (1st & 2nd loops) #respectthewild	Town of Eagle		0	4	0.87%	461	3	0
 Town of Eagle, CO Dec 13, 13:01	 There's still time to apply for 2023 energy rebates! Submit your rebate application below by 12/31. Apply for residential rebates: https://www.walkingmountains.org/sustainability-hub/energy-smart-for-my-home. Apply for...	Town of Eagle		0	33	4.65%	709	3	3
 Eagle Outside Dec 13, 13:00	 There's still time to apply for 2023 energy rebates! Submit your rebate application below by 12/31. Apply for residential rebates: https://www.walkingmountains.org/sustainability-hub/energy-smart-for-my-home. Apply for...	Town of Eagle		0	5	3.11%	161	0	0
 Town of Eagle, CO Dec 12, 14:01	 📄 NOW AVAILABLE: Town of Eagle Economic Development Plan Eagle's economic development plan outlines three priority areas - Create, Expand, and Attract - each with corresponding goals and action items. The plan serves as a...	Town of Eagle		0	5	1.78%	281	0	0
 Town of Eagle, CO Dec 12, 02:00	 Enter yourself or your neighbor in the Town of Eagle's Holiday Lighting Contest. Entry form on eagleoutside.com/events 🌟 Deadline is Friday, December 15th; judging will take place on Monday, December 18th at 6 PM #lightson	Town of Eagle		0	24	3.95%	608	7	0
 Eagle Outside Dec 12, 02:00	 Enter yourself or your neighbor in the Town of Eagle's Holiday Lighting Contest. Entry form on eagleoutside.com/events 🌟 Deadline is Friday, December 15th; judging will take place on Monday, December 18th at 6 PM #lightson	Town of Eagle		0	6	1.94%	309	4	0
 Town of Eagle, CO Dec 09, 20:00	 Monday is the last day to apply for this round of e-bike rebates from the state! Don't miss it!	Town of Eagle		0	7	2.41%	291	1	1
 Eagle Outside Dec 09, 20:00	 Monday is the last day to apply for this round of e-bike rebates from the state! Don't miss it!	Town of Eagle		0	5	2.56%	195	0	0
 Town of Eagle, CO Dec 08, 17:01	 TONIGHT Friday, December 8 ARTwalk 5 PM - 8 PM Broadway St. Support local artisans. Festivities also include WassailFest, happening at participating businesses around Eagle. Be Merry.	Town of Eagle		0	2	0.81%	247	1	0
 Eagle Outside Dec 08, 17:00	 TONIGHT Friday, December 8 ARTwalk 5 PM - 8 PM Broadway St. Support local artisans. Festivities also include WassailFest, happening at participating businesses around Eagle. Be Merry.	Town of Eagle		0	0	0%	161	0	0
 Town of Eagle, CO Dec 08, 00:00	 Happy Hanukkah! Wishing you & your family a joyous festival of lights.	Town of Eagle		0	15	3.04%	493	11	1
 Eagle Outside Dec 08, 00:00	 Happy Hanukkah! Wishing you & your family a joyous festival of lights.	Town of Eagle		0	12	3.8%	316	11	0
 Town of Eagle, CO Dec 07, 02:00	 Eagle Pool Open House Thursday, December 7 4:00 PM - 6:30 PM. District residents have something to look forward to with great anticipation, as the initial design concept for the Eagle Pool Replacement Project will be displayed at...	Town of Eagle		2	39	5.52%	706	1	0
 Eagle Outside Dec 07, 02:00	 Eagle Pool Open House Thursday, December 7 4:00 PM - 6:30 PM. District residents have something to look forward to with great anticipation, as the initial design concept for the Eagle Pool Replacement Project will be displayed at...	Town of Eagle		1	20	4.04%	495	1	0
 Town of Eagle, CO Dec 06, 14:02	 WASSAILFEST! From December 6th to 8th, Wassilers are invited to sample unique recipes and vote for their favorite. For a list of participating businesses, visit eaglechamberco/events	Town of Eagle		0	15	4.84%	310	1	0
 Eagle Outside Dec 06, 14:00	 WASSAILFEST! From December 6th to 8th, Wassilers are invited to sample unique recipes and vote for their favorite. For a list of participating businesses, visit eaglechamberco/events	Town of Eagle		0	5	2.87%	174	1	0
 Town of Eagle, CO Dec 06, 02:00	 (Post with no description)	Town of Eagle		3	38	5.69%	668	5	1
 Eagle Outside Dec 06, 02:00	 (Post with no description)	Town of Eagle		0	2	0.88%	227	0	0
 Town of Eagle, CO Dec 05, 13:01	 Colorado Gives Day! Tuesday, December 5th. To support Eagle County Gives and our local organizations, visit eaglecountycoloradogives.org	Town of Eagle		0	30	7.23%	415	10	0
 Eagle Outside Dec 05, 13:00	 Colorado Gives Day! Tuesday, December 5th. To support Eagle County Gives and our local organizations, visit eaglecountycoloradogives.org	Town of Eagle		0	4	2.6%	154	1	0
 Town of Eagle, CO Dec 05, 02:00	 Do you love our winter recreation opportunities in Eagle? Are you interested in learning more and helping us protect our wildlife while you get outside this winter? Join the Wildlife Education and Trail Ambassador Event on Wednesday...	Town of Eagle		0	11	2.2%	500	2	2
 Eagle Outside Dec 05, 02:00	 Do you love our winter recreation opportunities in Eagle? Are you interested in learning more and helping us protect our wildlife while you get outside this winter? Join the Wildlife Education and Trail Ambassador Event on Wednesday...	Town of Eagle		0	3	1.35%	223	2	0
 Town of Eagle, CO Dec 04, 02:00	 You could get an e-bike rebate from the state! Apply at the link below today through Dec. 11th at 4 pm. https://energyoffice.colorado.gov/ebike-rebates These rebates are income-qualified. You must earn 100% of the Area Median...	Town of Eagle		0	11	2.81%	391	1	1
 Eagle Outside Dec 04, 14:00	 You could get an e-bike rebate from the state! Apply at the link below today through Dec. 11th at 4 pm. https://energyoffice.colorado.gov/ebike-rebates These rebates are income-qualified. You must earn 100% of the Area Median...	Town of Eagle		0	3	1.75%	171	0	0
 Town of Eagle, CO Dec 03, 02:00	 One more sleep! Christmas on Broadway is Saturday, December 2nd. Broadway will be closed from 7 AM on Saturday until 7 AM on Sunday. Businesses are OPEN! Jingle Jog 5K & Fun Run is at 10 AM, benefiting Mountain Tots Prescho...	Town of Eagle		3	49	5.36%	915	8	1
 Eagle Outside Dec 02, 02:00	 One more sleep! Christmas on Broadway is Saturday, December 2nd. Broadway will be closed from 7 AM on Saturday until 7 AM on Sunday. Businesses are OPEN! Jingle Jog 5K & Fun Run is at 10 AM, benefiting Mountain Tots Prescho...	Town of Eagle		0	0	0%	212	0	0
 Town of Eagle, CO Dec 01, 19:01	 Winter Seasonal Trail Closures go into effect today, December 1st thru April 15th. These closures help protect 95% of the trails in Eagle for wintering wildlife. What is open? 🐾 You can hike and bike on Bellyache Road, Boneyard, Redne...	Town of Eagle		0	1	0.18%	555	1	0
 Eagle Outside Dec 01, 19:00	 Winter Seasonal Trail Closures go into effect today, December 1st thru April 15th. These closures help protect 95% of the trails in Eagle for wintering wildlife. What is open? 🐾 You can hike and bike on Bellyache Road, Boneyard, Redne...	Town of Eagle		0	3	0.85%	355	3	0
 Town of Eagle, CO Dec 01, 13:01	 Town of Eagle Holiday Lighting Contest - entries must be received by Friday, December 15th. Judging will take place Monday, December 18th at 6 PM. Contest Categories: Most Creative, Most Classical, Most Clark Griswold & Kids'...	Town of Eagle		0	6	1.5%	401	3	0
 Eagle Outside Dec 01, 13:00	 Town of Eagle Holiday Lighting Contest - entries must be received by Friday, December 15th. Judging will take place Monday, December 18th at 6 PM. Contest Categories: Most Creative, Most Classical, Most Clark Griswold & Kids'...	Town of Eagle		0	5	1.66%	302	0	1

Sales Tax – December 2023

4th Quarter Report will be available in February 2024.

- Sales tax remittances to date have been received from 10,193 unique vendors.

2023					
Month	Filing Period	Revenue Period	O/U	Online Sales	Online Retailers
Jan	\$ 723,602.44	\$ 793,838.43	5%	\$ 97,085.03	2016
Feb	\$ 683,666.36	\$ 675,138.60	5%	\$ 91,521.57	1792
Mar	\$ 748,463.34	\$ 698,140.28	5%	\$ 97,830.73	1892
1 Q	\$ 2,155,732.14	\$ 2,167,117.31	5%	\$ 286,437.33	
Apr	\$ 683,608.76	\$ 802,334.06	16%	\$ 125,304.23	1921
May	\$ 748,077.43	\$ 700,216.68	0%	\$ 98,906.78	1929
Jun	\$ 807,562.21	\$ 752,888.75	9%	\$ 102,648.68	2000
2 Q	\$ 2,239,248.40	\$ 2,255,439.49	8%	\$ 326,859.69	
Jul	\$ 822,098.65	\$ 813,185.50	7%	\$ 100,650.58	2063
Aug	\$ 824,574.01	\$ 839,114.42	3%	\$ 105,800.61	2047
Sep	\$ 769,895.32	\$ 961,539.85	4%	\$ 93,335.96	1920
3 Q	\$ 2,416,567.98	\$ 2,613,839.77	5%	\$ 299,787.15	
Oct	\$ 763,463.90	\$ 763,966.40	-1%	\$ 95,830.83	2046
Nov	\$ 750,466.04	\$ 739,205.13	-6%	\$ 88,291.66	2113
Dec		\$ 765,566.66	7%	\$ 114,381.91	2227
4 Q	\$ 1,513,929.94	\$ 2,268,738.19	0%	\$ 298,504.40	
Revenue	\$ 8,325,478.46	\$ 9,305,134.76	4%	\$ 1,211,588.57	
2022					
Month	Filing Period	Revenue Period	O/U	Online Sales	Online Retailers
Jan	\$ 663,390.42	\$ 756,522.10	10%	\$108,423.99	1700
Feb	\$ 652,999.31	\$ 645,546.63	12%	\$76,896.61	1570
Mar	\$ 738,512.86	\$ 662,102.20	26%	\$78,856.55	1508
1 Q	\$ 2,054,902.59	\$ 2,064,170.93	15%	\$264,177.15	
Apr	\$ 663,329.35	\$ 690,087.86	11%	\$96,780.33	1670
May	\$ 700,605.38	\$ 697,691.25	21%	\$80,285.44	1696
Jun	\$ 781,707.75	\$ 693,689.31	10%	\$89,006.46	1678
2 Q	\$ 2,145,642.48	\$ 2,081,468.42	14%	\$266,072.23	
Jul	\$ 775,639.50	\$ 762,434.69	11%	\$106,817.35	1707
Aug	\$ 762,818.54	\$ 811,313.66	15%	\$99,649.28	1796
Sep	\$ 783,101.11	\$ 926,873.65	40%	\$99,874.53	1827
3 Q	\$ 2,321,559.15	\$ 2,500,622.00	22%	\$306,341.16	
Oct	\$ 754,459.80	\$ 773,788.97	-3%	\$ 107,788.03	1728
Nov	\$ 702,952.53	\$ 786,384.35	22%	\$106,274.99	1743
Dec	\$ 950,392.83	\$ 718,801.18	10%	\$95,277.08	2023
4 Q	\$ 2,407,805.16	\$ 2,278,974.50	8%	\$309,340.10	
Revenue	\$ 8,929,909.38	\$ 8,925,235.85	15%	\$1,145,930.64	



Town of Eagle

WWTP and LBWTP Solar -
Investment Grade Audit (IGA) Report



PROJECT CONTACTS

Yearout Energy Services Company

Anthony LaMorte, EIT, CEM
Project Development Leader
970-379-8931
anthony.lamorte@yearoutenergy.com

Isaac Ortiz
Project Development Engineer
505-537-0438
isaac.ortiz@yearoutenergy.com

Niffy Ovuworie
Project Success Leader
970-364-3396
niffy.ovuworie@yearoutenergy.com

Brad Brady
Vice President, Development
303-901-2529
brad.brady@yearoutenergy.com

Camilo Arango, CEM, LEED AP EBOM
Director, Project Development
505-977-0325
camilo.arango@yearoutenergy.com

Colby Geer
President
505-991-7711
colby.geer@yearoutenergy.com

Alex Montaña, CEM, CMVP, REP, LEED AP
Executive Vice President
505-999-9025
alex.montano@yearoutenergy.com

Cody Glover
Vice President, Operations
214771-2924
cody.glover@yearoutenergy.com

Town of Eagle

Tom Gasiorowski PE
Public Works Director
970-471-0651
tom.gosiorowski@townofeagle.org

Stephen Wilson PE, ENV-SP
Utility Manager
970-328-6546
stephan.wilson@townofeagle.org

Kira Koppel
Sustainability Specialist II
970-328-9658
kira.koppel@townofeagle.org

Larry Pardee
Town Manager
970-328-9628
larry.pardee@townofeagle.org

Melissa Daruna
Assistant Town Manager
970-404-9705
melissa.daruna@townofeagle.org

GLOSSARY OF ACRONYMS

Acronym	Definition
BTU:	British Thermal Units
BTUh:	British Thermal Units per Hour
CBECS:	Commercial Buildings Energy Consumption Survey
CFL:	Compact Florescent Lamps
CMU:	Concrete Masonry Unit
DDC:	Direct Digital Controllers
DHW:	Domestic Hot Water
DX:	Direct Expansion
ECI:	Energy Cost Index (\$/ft ²)
EER:	Energy Escalation Rate
EERC:	Energy Escalation Rate Calculator
EIFS:	Exterior Insulated Finish System
ERV:	Energy Recovery Ventilation
EUI:	Energy Utilization Index (kBtu/ft ²)
FCU:	Fan Coil Unit
FIM:	Facility Improvement Measures
ESPC:	Energy Savings Performance Contract
EPC:	Energy Performance Contract
HPS:	High Pressure Sodium
HVAC:	Heating, Ventilation, and Air Conditioning
IGA:	Investment Grade Audit
kBTU:	1,000 British Thermal Units
KVU:	Kitchen Ventilation Units
kWh:	Kilowatt Hour
LED:	Light Emitting Diodes
MH:	Metal Halide
MUA:	Make-up Air Unit
NG:	Natural Gas
NIST:	National Institute for Standards and Technology
RTU:	Rooftop Units
SQF:	Square Feet
TPO:	Thermoplastic Polyolefin
UH:	Unit Heater
VRF:	Variable Refrigerant Flow
W:	Watt

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1 Executive Summary

The Town of Eagle engaged Yearout Energy (YE) in February 2022 to perform an Investment Grade Audit (IGA) of their facilities. The IGA was developed following the program guidelines outlined by the Colorado State Energy Office’s Energy Performance Contracting Program (EPC).

A fundamental benefit of Energy Performance Contracting projects is that they allow for the savings from low-cost upgrades to help fund infrastructure improvements and other high priority initiatives. Throughout the IGA process, Yearout Energy collaborated closely with the Town of Eagle to identify and co-develop Facility Improvement Measures (FIM) that would allow the Town of Eagle to leverage future utility and operational cost savings to fund high priority capital improvements through an EPC. Due to project schedules, there will be several implementation phases for this project. For this first phase, the Town of Eagle has selected to focus on implementing a solar measure at both the water and wastewater treatment plants.

The project-specific objectives for this IGA include:

- Offset the Town’s electrical usage with clean, on-site, solar PV generated power

An essential step in the IGA process is establishing the baseline performance for each facility from which proposed improvements will be measured. The following tables summarize the baseline annual cost and energy consumption by utility type for all facilities included in the IGA.

Table 1: Baseline Annual Cost Breakdown by Utility Type

Utility Type	\$/yr.
Electricity	\$180,876
Natural Gas	\$52,932
Total	\$233,808

Table 2: Baseline Annual Energy Consumption Breakdown by Utility Type

Utility Type	kBTU/yr.
Electricity	6,553,883
Natural Gas	4,435,200
Total	10,989,083

EPC PROJECT SUMMARY

As a result of the comprehensive IGA process, Yearout Energy and the Town of Eagle have co-developed the following recommended Phase One Energy Performance Contracting (EPC) project:

Table 3: EPC Project Summary

Turn-Key EPC Project Price	\$3,020,490
DOLA RENW Grant	\$750,000
Up-Front Capital Contribution	\$2,270,490
Year 1 Utility Savings	\$47,356
Year 1 Operations and Maintenance (O&M) Savings	(\$5,618)
Inflation Reduction Act (Estimated 30% Direct Payment from IRS to the Town of Eagle)	\$871,187
Average Service Life of Proposed Measures	30 years
Percent Offset in Annual Energy Costs	11.86%
Environmental Impact (Reduction in Annual Emissions)	1,284,472 lbs. CO ₂

The FIMs recommended for implementation include:

Table 4: EPC Project Facility Improvement Measures (FIMs)

FIM No.	FIM Name	Description
1	Renewable Energy	Install 250 kW DC of on-site solar at the Lower Basin Water Treatment Plant and 499 kW DC of on-site solar at the Wastewater Treatment Plant.

The following tables summarize the guaranteed annual utility savings from the proposed FIMs. The first table presents this information in terms of energy savings.

Table 5: Facility Improvement Measures (FIM) Utility Savings Summary

FIM No.	FIM Name	Electric Demand	Electric Consumption
		(kW)	(kWh)
1.00	Renewable Energy	28	1,115,380
Total		28	1,115,380

The following table shares the cost savings which will be achieved through implementing the recommended scopes of work as well as the estimated incentives. Incentives are in the form of the Inflation Reduction Act (IRA) Direct Payment. The proposed project maximizes the IRA, by proposing capital funding for the solar measure.

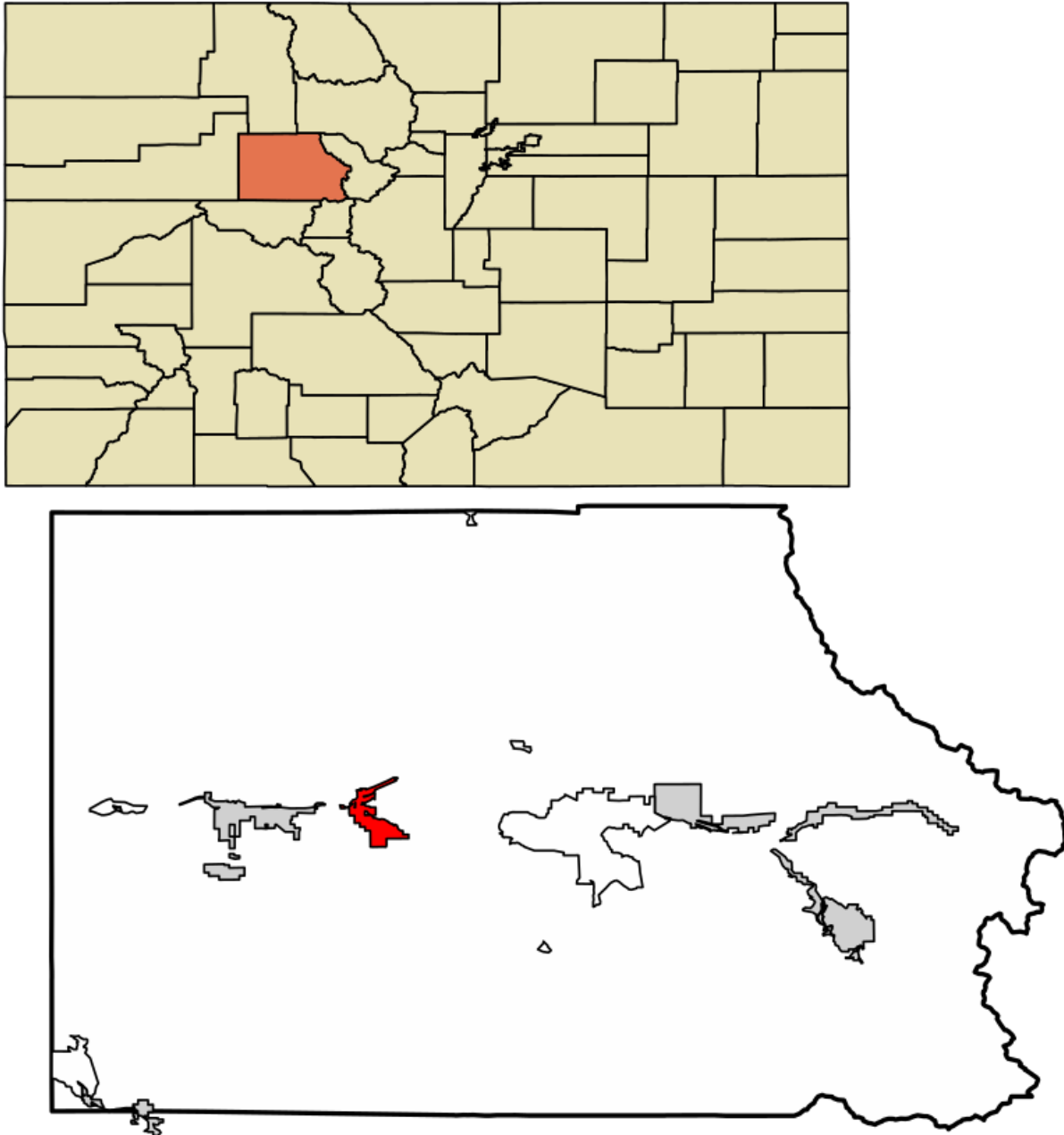
Table 6: Facility Improvement Measures (FIM) Cost Savings Summary

FIM No.	FIM Name	Year 1 Annual Utility Savings	Year 1 Annual O&M Savings	Estimated Incentives
1.00	Renewable Energy	\$47,356	(\$5,618)	\$869,619
Total		\$47,356	(\$5,618)	\$869,619

2 Facility Descriptions

The Town of Eagle is located in the valley of the Eagle River in northern central Colorado. The Town of Eagle covers 5.7 square miles with a total population of roughly 7,500. The Town of Eagle contracted with Yearout Energy to audit their water and wastewater facilities.

Figure 1: Town of Eagle Location within Eagle County, Colorado



The Investment Grade Audit (IGA) included the following facilities:

Table 7: IGA Facility List

Site No.	Site Name	YE Site Code	Gross Area SF	Year Built / Renovated
01	Wastewater Treatment Plant	WWTP	24,589	2008
02	Lower Basin Water Treatment Plant	LBWTP	18,600	2017
----	Total	----	43,189	----

Refer to [APPENDIX A](#) for Facility Worksheet and full Building Narratives report.

3 Baseline Utility Analysis

The baseline utility analysis was performed by evaluating utility records for 2020 through 2023. The utility records consisted of electricity data from Holy Cross and natural gas from Black Hills Energy. Due to being recently built and brought fully online, the baseline for the LBWTP consists of the data from Sept. 2021-Sept. 2023. Refer to [APPENDIX C.1](#) for more detailed baseline utility information.

Table 8: Baseline Utility Analysis – Meter Summary

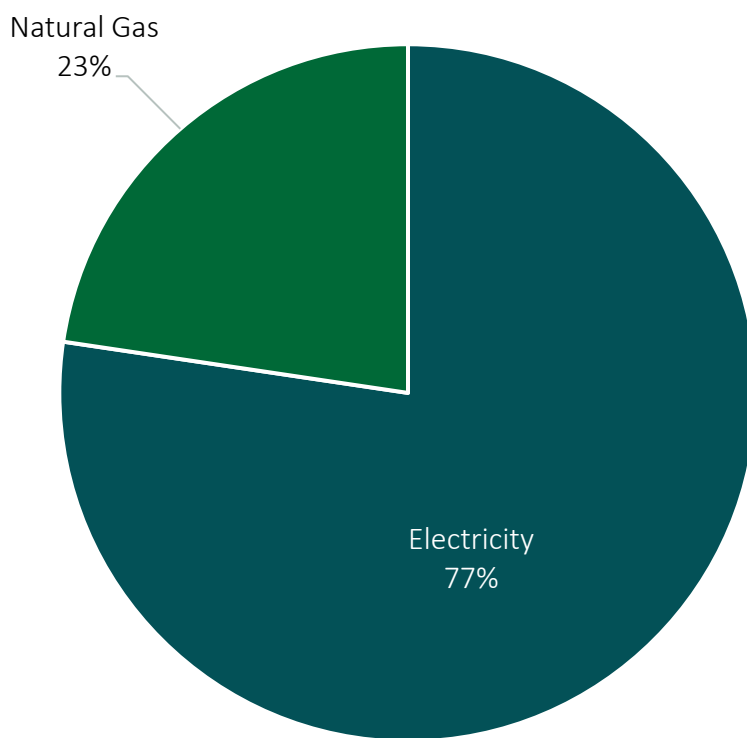
Utility Type	Utility Provider	Meters Baselined
Electricity	Holy Cross	2
Natural Gas	Black Hills Energy	6
Total	-----	8

The following table and pie chart depict the baseline annual cost by utility type for all facilities included in the IGA.

Table 9: Baseline Annual Utility Cost Breakdown by Utility Type

Utility Type	\$/yr.
Electricity	\$180,752
Natural Gas	\$52,932
Total	\$233,684

Figure 2: Baseline Utility Cost Breakdown by Utility Type



The following table and pie chart depict the baseline annual energy consumption by utility type for all facilities included in the IGA.

Table 10: Baseline Annual Energy Consumption by Utility Type

Utility Type	kBTU/yr.
Electricity	6,553,883
Natural Gas	4,435,200
Total	10,989,083

Figure 3: Baseline Annual Energy Consumption Breakdown by Utility Type

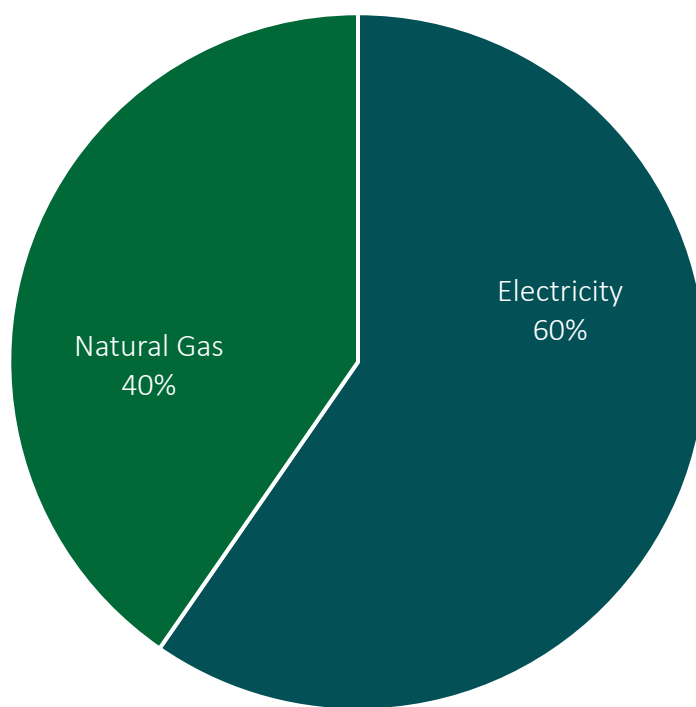


Figure 4: Facilities Baseline Annual Utility Cost Summary by Facility

Site No.	Facility	Electric	Natural Gas	Total
01	Wastewater Treatment Plant	\$121,381	\$51,258	\$172,639
02	Lower Basin Water Treatment Plant	\$59,495	\$1,674	\$61,169
Total		\$180,876	\$52,932	\$233,808

Figure 5: Facilities Baseline Annual Utility Consumption Summary by Facility

Site No.	Facility	Electric		Natural Gas	Total
		kW	kWh	therm	kBTU
01	Wastewater Treatment Plant	2,550	1,369,333	43,338	9,005,965
02	Lower Basin Water Treatment Plant	2,242	551,500	1,014	1,983,118
Total		4,792	1,920,833	44,352	10,989,083

3.1 Benchmarking

3.1.1 BASELINE ENERGY UTILIZATION INDEX (EUI)

A common approach to benchmarking a facility is through the comparison of the facility's Energy Utilization Index (EUI) against that of similar facilities in similar climates. The EUI is determined by dividing the total annual energy consumption by the area of the facility (kBtu/ft²/yr). The lower the EUI, the better the energy performance of the facility.

The Commercial Buildings Energy Consumption Survey (CBECS) offers an average comparison EUI by region. Wastewater and Water Treatment plants are not covered in this survey as the survey data is based on square footage which is not directly related to the facility capacity. There is an Energystar benchmarking method related to water treatment that will be looked at in a future phase that considers water process upgrades for both facilities.

Table 11: Baseline Water Treatment Facilities EUI Summary (kBtu/ft²/yr)

Site	Site EUI	
	kBtu/ft ² /yr	Category
Wastewater Treatment Plant	366.3	Wastewater Treatment Plant
Lower Basin Water Treatment Plant	106.6	Drinking Water Treatment & Distribution Use

3.1.2 BASELINE ENERGY COST INDEX (ECI)

Another common method for benchmarking a facility is through the comparison of the facility's Energy Cost Index (ECI) against that of similar facilities. The ECI is determined by dividing the total annual energy utility cost by the square footage of the facility (\$/ft²/yr.). The lower the ECI, the better the energy cost performance of the facility.

Table 12: Baseline ECI Summary (\$/ft²/yr.)

Site	ECI (\$/ft ² /yr)
Wastewater Treatment Plant	7.02
Lower Basin Water Treatment Plant	3.29

See [APPENDIX C.1](#) Baseline Utility Analysis.

3.2 Baseline Utility Rates

See [APPENDIX C.2](#) for detailed analysis of the Electric rate used to calculate savings. Also see [APPENDIX C.3](#) for the most up to date published rate tariffs from the utilities. The Solar Credit Avoided Rate is an average using 2021 and 2022 rate data.

The following acronyms have been applied for the utility providers:

HCE: Holycross Energy

3.2.1 ELECTRICITY RATES

Holycross Energy (HCE) is the electric utility provider for all sites; rates are tabulated below.

Table 13: Electric Rates

Rate Number	Provider	Rate Description	Effective Date	Demand	Energy
				\$/kW	\$/kWh
63-HCE	HCE	Three Phase Demand	March 15 2022	\$6.11	\$0.07446
SCAR	HCE	Solar Credit Avoided Rate	N/A	\$0.00	\$0.04

3.3 Baseline Utility Meters

When discussing the utility meters, the following acronyms have been applied for the utility types:

ELEC: Electricity

3.3.1 APPLICABLE WWTP AND LBWTP ELECTRIC METERS

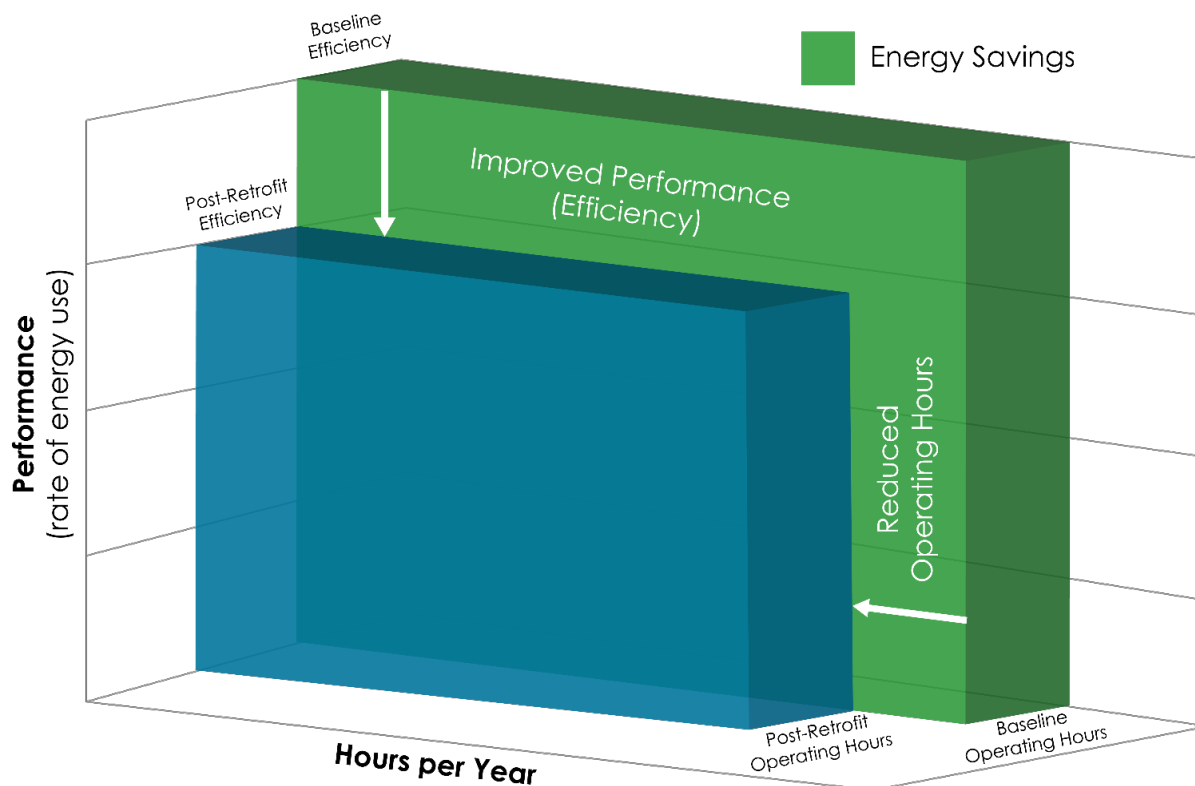
Table 14: WWTP and LBWTP - Utility Meters

Utility Type	Area Served	Account #	Meter #	Provider	Rate
ELEC	WWTP	500376600	911914	HCE	63-HCE
ELEC	LBWTP	503695801	912064	HCE	63-HCE

4 Facility Improvement Measures

The two fundamental factors contributing to energy savings are performance and duration. Performance describes how much power is being used to accomplish a task, while duration describes the length of time to complete the task.

Figure 6: Facility Improvement Measure (FIM) Diagram



(M&V GUIDELINES: MEASUREMENT AND VERIFICATION FOR FEDERAL ENERGY PROJECTS VERSION 3.0)

A fundamental benefit of EPC projects is that they allow for measures of varying financial returns to be bundled together to form a combined project that meets the Town of Eagle's financial and operational objectives. This process places the Town of Eagle at the project helm in terms of selecting which measures will be implemented as part of the final project scope within a targeted financing term.

A comprehensive Investment Grade Audit (IGA) was performed to establish the baseline condition and performance of each facility, and to identify and co-develop the following recommended FIM. The following table identifies FIM applied to each facility.

Figure 7: Proposed FIM Matrix

Site	Site No.	1.00 Renewable Energy
Wastewater Treatment Plant	01	●
Lower Basin Water Treatment Plant	02	●
Total		2

4.1 FIM 1.00 Solar Photovoltaics

4.1.1 EXISTING CONDITIONS

There is currently no existing Solar PV or other on-site renewable generation source at the LBWTP/WWTP site.

4.1.2 PROPOSED MODIFICATIONS

This measure will install new solar PV systems that will generate clean, renewable energy onsite for the next 25 to 50 years and reduce the amount of energy purchased from the utility grid. This measure will provide complete turnkey installation, interconnection, startup, and commissioning of the solar PV systems. See the entire proposed solar PV system, including all four interconnected arrays, in Figure 8 below.

Figure 8: Overhead of the Proposed Combined Solar PV Systems



The following table outlines the proposed solar PV systems. Please note that two of these systems will be on new Production Meters.

Table 15: Town of Eagle Facilities - Proposed Solar PV Systems

FIM No.	Facility	Meter Number	PV System Size (kW)	Mounting
4.01	Wastewater Treatment Plant	New Production Meter	474	Ground
4.01	Wastewater Treatment Plant	911914	25	Ground
4.02	Lower Basin Water Treatment Plant	New Production Meter	225	Ground
4.02	Lower Basin Water Treatment Plant	912064	25	Ground
Total			749	

This is the solution being proposed today under the current rate structure. The Town of Eagle and Yearout energy are working with Holycross to find a more financially beneficial solution for the Town. If another solution is reached, then the proposed solution may change. See [APPENDIX D.1](#) for additional information regarding solar PV arrays systems.

4.1.3 SAVINGS METHODOLOGY

Energy savings for this FIM are based on credits through production meters at an estimated avoided rate and a small part offset of energy delivered by the electric utility. Energy production was estimated using models in Helioscope and Energy Toolbase that includes regional databases. Simulation production is based on system and site-specific inputs which include:

1. Site location
2. System azimuth
3. System tilt
4. 30-Year historical weather data
5. Module type and efficiency
6. Obstructions and shading
7. System design
8. System losses

4.1.3.1 Energy Savings

To calculate energy savings, the total energy produced was allocated into four systems. This includes the two production meters and two net meters described above.

$$[S = E \times R_{prod} + E \times R_{net}]$$

Where:

S = cost savings (\$)

E = total energy production (kWh)

R_{prod} = estimated avoided energy rate associated with a production meter (\$/kWh)

R_{net} = building offset energy rate associated with net metering (\$/kWh)

4.1.3.2 Demand Savings

Where applicable, a conservative approach was taken to estimate demand savings based on a study published by NREL.¹ For specific meters where a demand component is present on associated electric utility rate, a small percentage of the total proposed solar PV system capacity is expected to reduce the on-peak monthly demand. Demand savings was only calculated and included for net metered system capacity.

$$[S = C \times O \times D \times M]$$

Where:

S = Cost savings (\$)

C = Installed solar PV system capacity (kW DC)

O = Percent of solar PV system capacity impacting monthly demand (Estimated at 5%)

D = On-peak demand rate (\$/kW)

M = Months per year

4.1.3.3 Operation & Maintenance

There is a cost associated with the annual maintenance of the solar PV system. Items that could be covered under this cost would be system inspection, panel cleaning, replacement, system diagnostics, etc. These costs are quantified in the O&M section.

¹ National Renewable Energy Laboratory. (2017). *How to Estimate Demand Charge Savings from PV on Commercial Buildings*. www.nrel.gov.

4.1.4 GUARANTEED YEAR 1 UTILITY SAVINGS

The guaranteed utility savings are presented in this section's table. These are the calculated savings from the electricity generated by the solar PV system.

Table 16: FIM 1.00 Renewable Energy - Guaranteed Year 1 Utility Saving

FIM No.	Facility	Electricity		
		kW	On-Peak kWh	Off-Peak kWh
1.01	Wastewater Treatment Plant	14	742,737	0
1.02	Lower Basin Water Treatment Plant	14	372,643	0
Total		28	1,115,380	0

4.1.5 FINANCIAL SUMMARY

The financial summary is presented in this section's table. These are the calculated monetary savings values from the electric generation of the solar PV system. The O&M costs for the system are also presented. These are the costs associated with the maintenance of the systems. The cost for labor, equipment, and material is also presented. Please refer to the savings calculations and scope of work above for clarifications on how the numbers below were calculated. Also, for a more detailed description of this breakdown see the financial analysis section.

Table 17: FIM 1.00 Renewable Energy - Financial Summary

FIM No.	Facility	Year 1 Annual Utility Savings	Year 1 Annual O&M Savings	Labor, Equip & Material Costs	Estimated Incentives
1.01	Wastewater Treatment Plant	\$31,079	(\$3,743)	\$1,317,348	\$2,720
1.02	Lower Basin Water Treatment Plant	\$16,277	(\$1,875)	\$685,381	\$2,720
Total		\$47,356	(\$5,618)	\$2,002,729	\$5,440

4.1.6 SCOPE OF WORK

The locations, capacity, guaranteed generation, and mounting type are found in the table below.

Table 18: FIM 1.00 Locations, Capacities, Estimated Generation, and Mounting Type

FIM No.	Facility	Capacity (kW)	Estimated Annual Generation (kWh)	Mounting Type
1.01	Wastewater Treatment Plant	474	705,526	Ground
1.01	Wastewater Treatment Plant	25	37,211	Ground
1.02	Lower Basin Water Treatment Plant	225	335,378	Ground
1.02	Lower Basin Water Treatment Plant	25	37,264	Ground
Total		749	1,115,380	

The scope of work is as follows:

- Furnish and install the solar PV systems as described above.
- Undertake solar design.
- Provide design documents necessary for permitting and interconnection.
- Complete and submit interconnection applications for required metering.
- Obtain building and electrical permits as required.
- Provide and install 7' wildlife fencing around the perimeter of the PV arrays.
- Provide stamped engineered electrical and structural drawings by a Professional Engineer registered in the State of Colorado as required by the AHJ.
- Provide and install conduit between PV panels and inverter, inverter and combiner, combiner and recombiner, recombiner and AC disconnect, and AC disconnect and interconnect location.
- Furnish and install cellular monitoring.
- Upstart and Commissioning of the project

Clarifications

1. The land being used has been reviewed and approved by all the relevant parties through the client.
2. The solar PV interconnection method presented here is the best solution under current rate tariffs, but the interconnection plan may change as a more beneficial solution is put in place.
3. Final solar PV system design, savings, and cost are dependent on panel wattage output available at time of order and will vary array production, mounting configuration, system layout, and carport size.
4. Solar PV array may require electrical utility supplemental review and will require approval.
5. The Town of Eagle should anticipate planned outages required to complete the scope of work. Yearout Energy will work diligently with the Town of Eagle to determine the best plan and schedule for these impacts.
6. Installation will be executed in accordance with industry-standard safety practices and with the care, skill, and diligence provided by the contractor.
7. Installation of all materials will be executed per manufacturer's recommendations.
8. The Town of Eagle is to provide Yearout Energy with internet connectivity at each site for remote monitoring. Connectivity can be provided through either hard-wired or wireless communication.
9. Any conditions not meeting current codes, and any system deficiencies will be brought to the attention of the Town of Eagle. Any work required to remedy these situations is excluded.
10. The area of construction will be considered closed off for non-construction related activities. Closures will be coordinated with the Town of Eagle.

Exclusions

1. Changes in design related to available space as identified by the customer, including underground obstructions.
2. Changes in design related to customer requests that have not been discussed to the date of IGA delivery.
3. Changes in design related to changes in interconnection plan.
4. Removal of asbestos containing materials, lead containing materials or any other hazardous / suspect materials.
5. Saw cutting, removal, patching, and replacement of landscaping, gravel ground cover, concrete, and asphalt.
6. Formed concrete, including equipment pads, leveling channels, conduit curbs, and pole bases other than defined for racking structure above.
7. Cutting, patching, and painting and all other miscellaneous coatings not explicitly defined in the scope of work.
8. Fire sealing, fireproof patching, damp proofing, and water stops at conduit entrances/penetrations into buildings.
9. Tree removal and trimming.

10. Penetrations and sealing of buildings envelope.
11. Cathodic protection, snow melt and heat trace.
12. Independent testing laboratory services including concrete and compaction/density testing.
13. Surveying, dust control, seeding, erosion control and dewatering.
14. Repair or installation of any structural systems.
15. Any site prep work needed to install the system including grading or moving dirt and debris.
16. Any special permitting such as Major Impact Studies.
17. Unforeseen utility upgrades.
18. Yearout will provide the necessary geotechnical survey, but this is sample testing to identify general soil make up. The need for upgrades may be discovered during onsite work and these are not included in this proposal.
19. Required road base, gravel or other site upgrades for access purposes.

4.1.7 EQUIPMENT SERVICE LIFE

The estimated service life for this FIM is as follows:

FIM Component	% Of FIM Total Cost	Median Service Life
PV modules	75%	30 Years
Inverters	10%	10 years
Racking	15%	40 years
FIM Weighted Average Service Life	100%	30 Years

4.1.8 WARRANTY

An industry-standard 1-year materials and workmanship warranty is provided by Yearout Energy. Any material warranties that extend beyond this period will be transferred to the Town of Eagle upon project closeout.

The warranty period information for the major pieces of equipment associated with this measure is summarized in the table below.

Table 19: Renewable Energy - Warranty Information

FIM Component	Warranty Period
PV Modules	25-year production 12-year product
String Inverters	10 years
Racking	25 years

4.1.9 TRAINING

Yearout Energy will co-develop a training plan with the Town of Eagle that is tailored to the needs and skill level of the building operators. Training sessions are recorded and provided to owner in electronic format to the Town of Eagle for future reference. Topics commonly covered during these training sessions include:

1. Equipment start-up, proper operation, shutdown, power failure, etc.
2. Sequences of operation
3. Operations and maintenance (O&M) manuals
4. Diagnosing and troubleshooting common equipment issues
5. Preventative maintenance and required documentation
6. Health & safety considerations
7. Warranty information
8. Identified system deficiencies

4.1.10 GENERAL CLARIFICATIONS

1. Yearout Energy shall provide the necessary scheduling and coordination of its own forces and of subcontractors sufficient to operate the orderly and efficient completion of Yearout Energy's work without delay, interference, or interruption. Yearout Energy will make all efforts to meet schedules agreed to in advance. Yearout Energy's work shall be performed during typical five-day, forty-hour work weeks. If extended hours are required due to circumstances beyond the control of Yearout Energy, Yearout Energy shall be compensated for additional overhead, premium time costs, and lost productivity. Yearout Energy will substantiate circumstances beyond control in writing to the Town of Eagle prior to incurring any additional costs for overhead, premium time, and lost productivity.
2. The project will be invoiced monthly, projecting work through the end of the month. Invoices will include pay requests and schedule of values. Our proposal may involve a significant amount of off-site prefabrication. Yearout Energy anticipates invoicing for materials stored and work performed off-site at our fabrication facility.
3. Payment and performance bond are included.
4. Assumes reasonable access to the work areas.
5. Upgrades and modifications are to match existing material types in like-kind unless specifically noted otherwise in scope of work.
6. The Town of Eagle should anticipate limited planned outages and service interruptions as necessary to complete scope of work. Yearout Energy will work diligently with the Town of Eagle to determine the best plan for work.
7. Assumes that existing building electrical service and infrastructure is adequate to power new equipment.
8. We anticipate temporary power for tools and welding equipment will be available within 75' of work areas.
9. Our proposal anticipates operating under the guidelines of Yearout Energy's Safety Program. We reserve the right to review requirements of any other safety program that will be in force on the project to determine if additional costs will apply.
10. We anticipate parking for craft and supervisory personnel will be on the job site. Any necessary permits will be issued by the Town of Eagle for craft personnel. Transportation of our employees from an off-site location is not included.
11. Assumes adequate lay-down areas and storage facilities will be available in order to facilitate the execution of our work.
12. Yearout Energy has included separate trash dumpster for disposal of construction waste.
13. Permits and inspections by the AHJ are included.
14. Customer will provide access to IT network and support from IT Department as required.

4.1.11 EXCLUSIONS

1. Removal of any hazardous materials. Should any hazardous materials be encountered, we will immediately notify the Town of Eagle to determine a mutually agreeable course of action. We reserve the right to be compensated for cost related to the discovery of

any hazardous material. No work will be performed in areas containing hazardous materials. Provisions for seismic calculations

2. The requirement to provide additional insured status on the employer's worker's compensation insurance.
3. Repair or correction of pre-existing code violations.
4. Additional exclusions described in the individual FIM sections.

4.2 Measures Investigated but Not Recommended

The following FIMs were investigated, but not selected for the reasons explained below.

4.2.1 WWTP AND WTP PROCESS IMPROVEMENTS

The town is working with a specialized engineering team to define this SOW and the timing will not align. This process entails nutrient studies that will inform system design, which are currently underway. Yearout Energy will continue to work with the customer to build this into future phases, if possible.

4.2.2 BUILDING UPGRADES AT THE WWTP AND LBWTP

Due to the age and use of these buildings more intensive building upgrades do not make financial sense. In the case of the LBWTP, this facility was built in 2017 meaning that most of the building systems are in near new condition. As is the case for both buildings, these are designed as functional process facilities where occupancy and non-process energy use is low. Both buildings contain LED lighting throughout.

5 Commissioning Plan

Commissioning is a systematic process of ensuring, through documented verification, that the building systems and components perform according to the design intent and Town of Eagle's project requirements. All equipment and systems should be installed according to the manufacturer's recommendations, specifications, and the best practices and standards of the industry. A complete commissioning process begins at the design phase and continues through implementation and acceptance phases with actual verification of performance.

Throughout the commissioning process, the commissioning agent develops specific commissioning procedures and forms as necessary to suit the project requirements while also reviewing equipment submittals, manufacturer's startup documentation, operations, and maintenance documentation, as well as training plan(s) for completeness.

A final commissioning report shall be developed upon completion of the project that includes the pre-functional and functional test forms as well as the master deficiencies list that will be maintained throughout the testing process until all items are closed out.

The completed commissioning report becomes the Town of Eagle's commissioning record and provides a reference to system setup, test results, and operational data for the commissioned systems.

Yearout Energy will commission all equipment installed as part of the project scope to ensure proper and efficient operation. The following identifies the FIMs to be commissioned:

FIM 1.00 SOLAR PHOTOVOLTAICS

1. Submittal review
2. Installation checkout
3. Witness of on-site testing

6 Measurement and Verification

6.1 M&V Plan

FIM 1.00 SOLAR PHOTOVOLTAICS

IPMVP Option	Option B – Retrofit Isolation
Guarantee Factor	95%
Key Performance Indicators (KPIs)	1. Solar Production
Baseline Value	1. No Existing Solar Production
Proposed Value	1. Refer to IGA report guaranteed savings section
Baseline Audit Tasks	1. Review baseline utility information and electric rate structure 2. Site survey to confirm array orientation, available space and means of interconnection
Post-Installation M&V Tasks	1. Review as-built documentation to validate installed equipment meets minimum performance criteria. 2. If necessary, revise savings calculations based on as-built conditions.
Annual M&V Tasks	1. Ongoing review of system production via remote monitoring to ensure proper operation.
Ongoing Town of Eagle Responsibilities	1. Refrain from introducing any obstructions that would shade the PV system and negatively impact system performance 2. Maintain equipment free of debris 3. Maintain equipment per manufacturer's and Yearout Energy's recommendations

4. Immediately notify Yearout Energy of any changes made to equipment operation
5. Any replacement equipment shall meet or exceed the proposed performance criteria
6. Provide Yearout Energy remote access for monitoring PV system operation
7. Customer to plan LBWTP production to maximize solar offset

Stipulated Factors

1. Weather / Solar Insolation
2. Shading / Solar Access
3. Proposed equipment efficiencies per Manufacture's data.
3. Utility Net Metering Program
4. Utility production meter or avoided cost rates

6.2 Annual M&V Fee

Measurement and verification is required by the State EPC Program for the first three years. The fee for the annual M&V tasks is presented in the table below. The first three years of fees are included in the project scope and paid for through utility savings. This section uses a conservative 3% escalation rate from year to year.

Table 20: Annual M&V Fee

Year	M&V Fee	Year	M&V Fee
1	(\$6,705)	16	(\$10,446)
2	(\$6,906)	17	(\$10,760)
3	(\$7,113)	18	(\$11,083)
4	(\$7,327)	19	(\$11,415)
5	(\$7,547)	20	(\$11,758)
6	(\$7,773)	21	(\$12,110)
7	(\$8,006)	22	(\$12,474)
8	(\$8,246)	23	(\$12,848)
9	(\$8,494)	24	(\$13,233)
10	(\$8,749)	25	(\$13,630)
11	(\$9,011)	26	(\$14,039)
12	(\$9,281)	27	(\$14,460)
13	(\$9,560)	28	(\$14,894)
14	(\$9,847)	29	(\$15,341)
15	(\$10,142)	30	(\$15,801)

7 Economic Analysis

7.1 Guaranteed Annual Utility Savings

The following table depicts the guaranteed utility consumption savings for the solar PV FIM. The savings shown in the table below include the panel degradation specified by the manufacturer at 0.5% a year as specified by the manufacturer.

Table 21: Guaranteed Utility Consumption Savings per FIM

FIM No.	FIM Name	Year	Electric Demand	Electric PV Production
			(kW)	(kWh)
1.00	Renewable Energy	1	28.50	1,115,380
		2	28.36	1,109,803
		3	28.22	1,104,254
		4	28.07	1,098,733
		5	27.93	1,093,239
		6	27.79	1,087,773
		7	27.66	1,082,334
		8	27.52	1,076,923
		9	27.38	1,071,538
		10	27.24	1,066,180
		11	27.11	1,060,849
		12	26.97	1,055,545
		13	26.84	1,050,267
		14	26.70	1,045,016
		15	26.57	1,039,791
		16	26.44	1,034,592
		17	26.30	1,029,419
		18	26.17	1,024,272
		19	26.04	1,019,151

FIM No.	FIM Name	Year	Electric Demand	Electric PV Production
			(kW)	(kWh)
		20	25.91	1,014,055
		21	25.78	1,008,985
		22	25.65	1,003,940
		23	25.52	998,920
		24	25.40	993,925
		25	25.27	988,956
		26	25.14	984,011
		27	25.02	979,091
		28	24.89	974,195
		29	24.77	969,324
		30	24.64	964,478
Total			795.81	31,144,941

A FIM-specific guarantee factor is applied to the estimated savings to determine the guaranteed savings for each FIM. The applied guaranteed factor is dependent on the FIM type, methodology for calculating savings, understanding of the facility, experience implementing similar measures, and the level of risk acceptable to meet the Town of Eagles financial objectives for the project.

Where the estimated savings are positive, the guarantee factor is applied as follows:

$$[Guaranteed\ Savings = Estimated\ Savings * Guarantee\ Factor]$$

Where the Estimated Savings are a negative value, the Guarantee Factor is applied as follows:

$$[Guaranteed\ Savings = Estimated\ Savings * (1 + (1 - Guarantee\ Factor))]$$

The following table depicts the projected utility cost savings per FIM, using a 3.72% escalation rate through the years. Please see the escalation rates section for further explanation.

Table 22: Estimated Utility Cost Savings per FIM

FIM No.	FIM Name	Year	Electric PV Production
1.00	Renewable Energy	1	\$47,356
		2	\$48,872
		3	\$50,436
		4	\$52,051
		5	\$53,717
		6	\$55,437
		7	\$57,212
		8	\$59,043
		9	\$60,934
		10	\$62,884
		11	\$64,898
		12	\$66,975
		13	\$69,119
		14	\$71,332
		15	\$73,616
		16	\$75,973
		17	\$78,405
		18	\$80,915
		19	\$83,505
		20	\$86,179
		21	\$88,937
		22	\$91,785

FIM No.	FIM Name	Year	Electric PV Production
		23	\$94,723
		24	\$97,756
		25	\$100,885
		26	\$104,115
		27	\$107,448
		28	\$110,888
		29	\$114,438
		30	\$118,101
Total			\$2,327,935

7.2 Operations and Maintenance (O&M) Savings

Comprehensive historic operations and maintenance (O&M) costs were not available for this project. Calculation methodology for O&M savings related are described below for applicable measures.

7.2.1 FIM 1.00 RENEWABLE ENERGY

There are no O&M savings for this FIM. There is an additional maintenance cost fee.

These annual costs are shown as a negative due to upkeep and maintenance of the Solar PV system.

The below table summarizes these costs using a conservative 3% escalation rate.

Table 23: Year 1 Operations & Maintenance Savings

FIM No.	FIM Name	Year	Estimated Annual O&M Savings
1.00	Renewable Energy	1	(\$5,618)
		2	(\$5,786)
		3	(\$5,960)
		4	(\$6,138)
		5	(\$6,323)
		6	(\$6,512)
		7	(\$6,708)
		8	(\$6,909)
		9	(\$7,116)
		10	(\$7,330)
		11	(\$7,549)
		12	(\$7,776)

FIM No.	FIM Name	Year	Estimated Annual O&M Savings
		13	(\$8,009)
		14	(\$8,249)
		15	(\$8,497)
		16	(\$8,752)
		17	(\$9,014)
		18	(\$9,285)
		19	(\$9,563)
		20	(\$9,850)
		21	(\$10,146)
		22	(\$10,450)
		23	(\$10,764)
		24	(\$11,087)
		25	(\$11,419)
		26	(\$11,762)
		27	(\$12,115)
		28	(\$12,478)
		29	(\$12,852)
		30	(\$13,238)
Total			(\$267,255)

For additional information see Section 9 Customer Acknowledgment. The negative savings for the solar PV system are an additional cost as previously explained in this section.

7.3 Estimated Utility Rebates

Utility providers often provide incentives to customers who implement select efficiency improvements to their facilities. The proposed scope of work for this project will provide the following estimated rebates per FIM.

Table 24: Estimated Rebates per FIM

FIM No.	FIM Name	Estimated Rebate
1.00	Renewable Energy	\$5,440
Total		\$5,440

Yearout Energy will coordinate with utility providers and submit required documentation during the implementation period. Utility rebates are estimated and subject to availability and final award by the utility provider. Rebates are not guaranteed by Yearout Energy, as these programs are at the discretion of the utility company. All awarded rebates will be paid directly to the Town of Eagle by the utility provider.

7.4 Inflation Reduction Act

The Inflation Reduction Act (IRA) is a new federal law investing in domestic energy production and promoting clean energy. Previously, non-taxpaying entities could not access rebates for installing solar photovoltaic (PV) systems. This Act provides a direct payment for 30% of the cost of photovoltaic (PV) systems that are purchased outright. Other factors can negatively or positively impact the value of the direct payment. As an example, when solar PV is financed, it reduces the total direct payment to 24.5%. The Town of Eagle can consult with their financial advisor for additional details. Yearout Energy will provide all the information required to support the application. There are some direct pay adders that can be applied for as well, some examples include low-income communities, energy communities, and American made products. Yearout Energy has built this project to help the Town of Eagle apply for the American made 10% adder. The estimate of the IRA funds is shown in the table below.

Table 25: Estimated IRA Direct Pay

FIM No.	FIM Name	Estimated Rebate
1.00	Renewable Energy	\$871,187
Total		\$871,187

7.5 Escalation Rates

The proposed utility escalation rates were determined by Yearout Energy utilizing the National Institute of Standards and Technology (NIST) Energy Escalation Rate Calculator and they were factored into the project's economic analysis as follow:

Table 26: Annual Escalation Rates

Category	Escalation Rate
Electricity	3.720% / Year
Operations & Maintenance	3.000% / Year
Measurement & Verification	3.000% / Year



NIST Energy Escalation Rate Calculation

<https://pages.nist.gov/eerc/>

Input Parameters:

Percent from Electricity: 100%
 Location: CO (West)
 Sector: Commercial
 Contract Start: 2024
 Contract Duration: 25 years
 Social Cost of GHG Assumptions: Medium - \$61 in 2023
 Annual Inflation Rate: 4.91%

Results:

Real Rate: -1.14%
 Nominal Rate: 3.72%
 Calculated on: 11/6/2023, 8:51:17 AM
 Datafile version: 2023

7.6 EPC Project Budget Summary

The table below depicts the proposed EPC Project open-book budget summary.

Table 27: EPC Project Budget Summary

Item	\$
Investment Grade Audit (IGA)	
Investment Grade Audit (IGA)	\$133,850
Implementation Cost	
Pre-Construction	
Design and Other Engineering	\$7,999
Pre-Construction Services	\$53,185
Other Pre-Construction Costs	\$24,878
Pre-Construction Cost Subtotal	\$85,966
Construction	
Trade Subcontracts	\$1,934,397
Design/Build Subcontracts	\$68,332
Direct Purchase Equipment	\$0
Construction Management	\$193,287
Project Engineering	\$12,999
General Conditions	\$42,824
Construction Completion	\$53,916
Other Construction Costs	\$123,885
Construction Cost Subtotal	\$2,429,640
Implementation Cost Subtotal	\$2,515,703
Profit Contingency	
Profit	\$264,955
Contingency	\$105,822
Profit Contingency Subtotal	\$370,937
Total Funded Amount (Before Taxes and State Fees)	\$3,020,490
Other Project Cost	\$
Gross Receipts Tax	0%
Other Project Cost Subtotal	\$0
Total Funded Amount	\$3,020,490

The following table provides a description of the project fees shown in the previous chart.

**Investment Grade
Audit**

Description

Investment Grade
Audit Fee

The IGA fee is based on the on the number of facilities and gross square footage included in the project.

**Pre-Construction
Costs**

Description

Design and Other
Engineering

All professional architectural and engineering costs required to design and specify the project scope of work, including engineering design, architectural design, additional energy engineering not included in IGA, engineering oversight and direction, code review.

Pre-Construction
Services

Activities required prior to commencing construction, including safety planning, additional bid solicitation, design review, submittal review, construction management planning, constructability reviews, coordination of utility incentives, scheduling, procurement planning, and other direct costs associated with presenting the best information to the Town of Eagle.

Other Pre-
Construction Costs

Site visits and Town of Eagle meetings are necessary before construction to ensure designs and equipment meet customer needs and align with project objectives. Other Pre-construction Costs may include but are not limited to administrative support, legal review, accounting services, printing, copying, binding, office supplies, business travel, business meals and supervision of project development staff.

Construction Fees

Description

Trade
Subcontractors

Subcontractors mutually selected by Yearout Energy and the Town of Eagle as the result of a competitive RFP process. Such subcontractors may include lighting contractors, sheet metal contractors, piping contractors, electricians, plumbers, carpenters, controls contractors, and other trade contractors as necessary to complete the project scope of work.

Design-Build
Subcontractors

Design-Build subcontractors are design and construction contractors that are engaged during the Investment Grade Audit to assist in the development and design of the project scope of work. Design-Build subcontractors act as their own design agent and finalize the design of the work product to be installed with oversight and direction provided by Yearout Energy. Such subcontractors include lighting contractors that perform the audit and design; mechanical contractors that coordinate all their own electrical, sheet metal work, piping and other support work; specialty contractors like pool cover vendors, and other specialty contractors necessary to complete the Work, are included in this category.

Direct Purchase Equipment	Direct purchases for equipment, materials and supplies made by Yearout Energy.
Construction Management	Oversight and coordination of all work (direct and subcontractors) including construction management, site supervision, safety, quality control, scheduling, budget management, contract administration, submittals, and other construction related items).
Project Engineering	Engineering & design support during the project implementation phase. Periodic inspections of work and supporting the construction manager with engineering analysis of required field modifications.
General Conditions	Miscellaneous project implementation costs, including job trailer, trailer office equipment, temporary utilities, permanent utility connection fees, barriers/security fencing, scaffolding, equipment rental, site guards, cleaning and trash and recycling dumpsters, lifts, and other direct project costs.

Construction Completion

Description

Commissioning	At the completion of the construction, Yearout Energy shall perform pre-functional and post-functional tests of all installed measures to ensure proper operation. This intensive quality assurance process ensures all systems and components installed as part of the EPC project are operating as intended to achieve the desired performance and guaranteed savings.
Construction Measurement & Verification (M&V)	At the completion of construction, Yearout Energy shall perform the measurement and verification (M&V) of installed equipment to verify post-retrofit energy efficiency and operation. These activities include establishing trends and deploying long-term data loggers, reviewing as-built documentation, and updating savings calculations, accordingly, performing post-installation M&V activities defined in performance assurance plan, generating and delivering the post-installation M&V report, and other M&V activities. This effort is necessary to ensure systems will meet the guaranteed energy savings and commence the performance assurance phase.
O&M Manuals	At the completion of construction, Yearout Energy shall provide complete Operation and Maintenance (O&M) Manuals to the Town of Eagle for reference.
Training	The process of ensuring that facility staff have been properly trained to operate and maintain the new systems and components installed as part of the EPC project.

Other Construction
Costs

Description

Permits

Construction is performed in various jurisdictions requiring compliance with jurisdictional codes. Yearout Energy must pay each jurisdiction to review design drawings; and render decisions on designs meeting code. In addition, Yearout Energy must apply for and receive any necessary construction permits based on designs and/or code review. This line item includes all costs associated with paying code reviewers, application fees and inspections fees for such permits.

Insurance

Yearout Energy is required to possess various levels of Builder's Risk Insurance, Automobile Liability Insurance, Professional Liability Insurance, and other General Liability Umbrella policies. This line item shall include an average amount of insurance that would be attributed to the project scope of work.

Performance &
Payment Bonds

A surety bond issued to guarantee satisfactory completion of the project delivered by Yearout Energy to the Town of Eagle.

Warranty Labor

The costs associated with supporting and coordinating equipment warranties during the first year following substantial completion.

Profit | Contingency

Description

Profit

The compensation to Yearout Energy for the assumption of the risk and delivery of the EPC Project.

Contingency

A special monetary provision used to cover uncertainties or unforeseeable elements of cost during project implementation. Any unused contingency will be applied towards additional scope as approved by the customer.

Annual Costs

Description

Measurement &
Verification (M&V)

The process for quantifying the savings delivered by the various measures included in the EPC project following IPMVP guidelines. Actual costs for this item are highly dependent upon the final measures installed and M&V options selected.

Maintenance

This is an optional item that is at the Town of Eagle's discretion to include. The inclusion of this item is typically encouraged for entities that do not have the in-house capabilities to maintain the equipment after installation.

7.7 FIM Summary

The determination of appropriate FIM's for implementation is the result of an iterative process with input from the Town of Eagle, engineering best practices, and an economic analysis. Infrastructure capital improvement measures are not driven simply by utility savings or return on investment, but rather by the necessity to keep the facility operational. This project includes both capital improvement and energy conservation type measures which are blended into a bundled solution that achieves the Town of Eagle's operational and financial objectives.

Table 28: FIM Summary

FIM No.	FIM Name	Year 1 Annual Utility Savings	Year 1 Annual O&M Savings	Year 1 Total Annual Savings	Labor, Equip & Material Costs	Estimated Incentives	Capital Contribution	Net Cost
1	Renewable Energy	\$47,356	(\$5,618)	\$41,738	\$1,999,124	\$5,440	\$0	\$1,997,289
Total		\$47,356	(\$5,618)	\$41,738	\$2,002,729	\$5,440	\$0	\$1,997,289
Investment Grade Audit (IGA)								\$133,850
Pre-Construction								\$86,063
Construction								\$426,911
Profit								\$264,955
Contingency								\$105,982
Total Funded Amount (Before Taxes and Fees)								\$3,020,490
Gross Receipts Tax								\$0
Total Funded Amount								\$3,020,490

8 Environmental Impact

Through the implementation of the proposed project scope of work the resultant energy savings would deliver the following environmental impact:

Utility Type	Annual Savings	lbs CO ₂	Metric Tonnes CO ₂
Electricity	1,115,380 kWh	1,284,472	582.63
Total	-----	1,284,472	583

This Reduction in Annual Emissions Is Equivalent To Any of the Following:

112	Number of Vehicles Removed From Roads (Avg Size); or
757,838	Number of Miles Not Driven (Avg Size); or
16,056	Number of 75 Watt Light bulbs Not Energized; or
56	Number of Avg Sized Houses Removed From Power Grid; or
159	Acres of Trees Planted; or
600,220	Pounds of Coal Not Burned

Other Emissions Factors

Electric: 1.1516 lbs CO₂e / kWh (eGRID 2020 Subregion RMPA)
 Natural Gas: 11.707 lbs CO₂ / Therm
 Steam: 195.3636 lbs CO₂ / Mlbs (Seattle Steam)
 Fuel Oil: 22.384 lbs CO₂ / gal
 Propane: 12.5 lbs CO₂ / gal
 Water: 14.1 kWh / gal (Supply, Distribution, Treatment, Pumping)
 Conversion: 2,204.623 lbs CO₂ / Metric Tonnes CO₂

Equivalents Conversions

Car Emissions: 11,470 lbs CO₂ / car / yr
 Tree Carbon Sequestration: 8,066 lbs CO₂ / acre / yr
 Vehicle Mileage Emissions: 0.59 lbs CO₂ / mile
 75 W Light Bulb Emissions: 80 lbs CO₂ / Light Bulb / yr
 Tree Carbon Sequestration: 8,066 lbs CO₂ / acre / yr
 Coal Emissions: 2.14 lbs CO₂ / pound Coal



9 Customer Acknowledgements

It is essential that the Town of Eagle is fully informed and engaged in the EPC process to ensure a successful project outcome. The following table details the key elements from the proposed project scope that requires acknowledgment by the Town of Eagle through the acceptance of this IGA Report.

Table 29: Customer Acknowledgements

Item #	Description
1	The IGA Report has been distributed to all Town of Eagle staff and other stakeholders that may be responsible for implementing and/or maintaining the key elements of the project scope of work and associated utility and operational savings.
2	Town of Eagle agrees to the proposed utility baselines detailed in the IGA Report.
3	Town of Eagle acknowledges that, to the best of their knowledge, the depicted existing operating hours, set points, sequences of operation, and other inputs outlined throughout this report used to establish the baseline operation of each facility are accurate.
4	Town of Eagle acknowledges and agrees to the proposed scope of work, with consideration as to how these changes may impact building occupants.
5	Town of Eagle shall document and report any deviations to these targets to Yearout Energy during the performance period.
6	Town of Eagle agrees to properly maintain the equipment installed as part of this project per the manufacturer's and Yearout Energy's recommendations.
7	Town of Eagle is responsible for the ongoing maintenance and commissioning of systems to ensure savings are sustained throughout the performance period, a maintenance contract directly with the solar sub-contractor is recommended.
8	Town of Eagle agrees to provide Yearout Energy with remote access to the new monitoring web front-end for performance assurance activities.

- 9 Town of Eagle has reviewed the proposed M&V Plan in this report and agrees to the approach for how guaranteed savings will be evaluated.
- 10 Town of Eagle acknowledges that utility rebates are estimated, and the final awarded incentive amount is not guaranteed by Yearout Energy, as these programs are at the discretion of the utility company. All incentives will be paid directly to Town of Eagle from the utility provider.
- 11 Town of Eagle agrees to provide Yearout Energy with the following information for the duration of the performance period:
 - Grant access to utility information directly from providers
 - Grant access to utility provider web portals where available
 - Copies of monthly utility bills (Provided to Yearout Energy electronically)
 - Completed Maintenance Checklists (Provided to Yearout Energy electronically)
- 12 Town of Eagle agrees to immediately notify Yearout Energy of any of the following:
 - Changes to facility or individual space operating hours,
 - Additions / Remodels to the facility,
 - Changes to how individual spaces are utilized,
 - Changes to facility equipment,
 - Changes to set points, schedules, and sequence of operation,
 - Issues with facility equipment; and
 - All other items that may affect the energy performance of the facility.
- 13 Town of Eagle will remedy any existing code violations that are outside the project scope discovered during the project implementation.
- 14 Town of Eagle accepts responsibility for identifying and removing any hazardous material within the affected areas prior to the installation of the project scope.
- 15 Town of Eagle will provide access to IT network and support from IT Department as required
- 16 Town of Eagle acknowledges that O&M savings and costs are estimated, has reviewed these, and acknowledges these savings will be applied to the debt service. The actual costs will be directly related to the solar maintenance contract or lack of one.

- 17 Town of Eagle understands that the above IGA is built off the current Holycross interconnection guidelines. There will likely be a change that will affect not only the estimated utility cost offset but also the interconnection plan. Also, attached to this change will be the requirement that the town review the usage of the WWTP and LBWTP facilities to best utilize the production from the associated solar PV system.

10 Appendices

Appendices A-Facility Information

Appendices B-Existing Equipment Inventory

Appendices C-Utility Baseline

Appendices D-FIM 1.00 Solar PV

Appendices E-Rebates

Appendices F-3rd Party Review

Appendices G-Meetings and presentations



To: Mayor Turnipseed and Town Council
From: Tom Gosiorowski, PE, Public Works Director
Date: January 4, 2024

Agenda Item: Yearout Energy Water & Wastewater IGA and EPC, Rate Variance Request to Holy Cross Energy

REQUEST: For Town Council to approve the Investment Grade Audit (IGA) for the Wastewater Treatment Plant (WWTP) and Lower Basin Water Treatment Plant (LBWTP) solar installation, to authorize the Mayor to execute the related Energy Performance Contract (EPC) pending legal counsel review, and to direct staff to draft a rate variance request to Holy Cross Energy and authorize the Mayor to sign the same.

ANALYSIS: The IGA will be presented by Yearout at the 1/9/24 Council meeting. The EPC requires final review from the Town's legal counsel, but given that it utilizes a standard template agreement provided by the State of Colorado Energy Office I do not believe there is risk in authorizing its execution pending further legal review.

Yearout has recently engaged with Holy Cross Energy (HCE) regarding a rate variance to the Town associated with the electricity generated by this project. This rate variance would grant the Town a rate similar to what HCE had proposed broadly last year. This rate variance would significantly reduce the payback period for this project. HCE has indicated that there is potential for this variance to be granted, therefore the next step is for the Town to submit a written variance request. We are seeking Council direction to draft this request for the Mayor's signature and then submit it to HCE.

COMMUNITY INPUT: None required at this time. No comments were received on the proposed expenditure during the 2024 Budget adoption process.

BUDGET / STAFF IMPACT: A total of \$3,139,314 is included in the 2024 Water and Wastewater budget for this project. Since the time staff prepared the proposed 2024 budget the Town was awarded a \$750,000 DOLA RENW Grant, therefore the Town's actual expenditure for the project will be less than has been budgeted.

STRATEGIC PLAN ALIGNMENT / STANDARDS ACHIEVED: This project adds to the achievement of the goals of Enhance The Economic Resiliency of the Town Government and Invest In Environmental And Energy Sustainability. It is also a significant step toward achieving the Town's Net Zero goal.

RECOMMENDED ACTION OR PROPOSED MOTION:

Motion to approve Resolution 1, Series 2024, a resolution of the Town Council approving the Investment Grade Audit for the Wastewater Treatment Plant and Lower Basin Water Treatment Plant Solar, authorizing the Mayor to execute an Energy Performance Contract for the same pending further legal counsel review, and directing staff to draft an electric rate variance request for the Mayor's signature and then submit the same to Holy Cross Energy.

ATTACHMENTS:

Yearout Energy presentation slides, IGA Report, Draft Energy Performance Contract, Resolution 04-2024

TOWN OF EAGLE, COLORADO
RESOLUTION NO. 04
(Series of 2024)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO APPROVING THE INVESTMENT GRADE AUDIT FOR THE WWTP AND LBWTP SOLAR PROJECT DATED DECEMBER 7, 2023; AUTHORIZING THE MAYOR TO EXECUTE AN ENERGY PERFORMANCE CONTRACT FOR THE PROJECT, AND DIRECTING STAFF TO DRAFT A ELECTRIC RATE VARIANCE REQUEST TO BE SIGNED BY THE MAYOR AND SUBMITTED TO HOLY CROSS ENERGY

WHEREAS, since 2021 the Town has been working with Yearout Energy to evaluate the use of Energy Performance Contracting for the implementation of certain energy use reduction and greenhouse gas emission reduction projects; and

WHEREAS, Yearout Energy has prepared an Investment Grade Audit pertaining to a solar photovoltaic installation at the Town's Wastewater Treatment Plant and Lower Basin Water Treatment Plant; and

WHEREAS, an Energy Performance Contract in a form promulgated by the State of Colorado Energy Office will be utilized for the implementation of this project; and

WHEREAS, the Town has appropriated funds in the 2024 budget for the purpose of this project; and

WHEREAS, an electric rate variance from Holy Cross Energy related to this project would favorably improve the project finances;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO AS FOLLOWS:

1. The Town approves the Investment Grade Audit for the WWTP and LBWTP Solar project dated December 7, 2023.
2. The Town approves entering into an Energy Performance Contract for the project with Yearout Energy and authorizes the Mayor to execute this contract pending final legal counsel review and satisfactory resolution of all comments on the contract document.
3. The Town desires to request an electric rate variance from Holy Cross Energy and directs staff to prepare this request for the Mayor's signature and then submit it to Holy Cross Energy. OK, if

INTRODUCED, READ, PASSED AND ADOPTED ON January 9, 2024.

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor

ATTEST:

Jenny Rakow, Town Clerk

COLORADO ENERGY OFFICE – ENERGY PERFORMANCE CONTRACTING PROGRAM



COLORADO
Energy Office

ENERGY PERFORMANCE CONTRACTING

FOR COLORADO POLITICAL SUBDIVISIONS (municipality, county, special district, or school district (**§29-12.5-101 (5) C.R.S.**))

POLITICAL SUBDIVISION: Town of Eagle, Colorado

ENERGY SERVICE COMPANY
(STATE REGISTERED NAME): Yearout Energy Services Company, LLC

PROJECT NAME: Town of Eagle Renewables Energy Savings Performance Contract

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PARTIES

This Energy Performance Contract (hereinafter called "Contract" or "EPC") is entered into by and between Energy Service Company, Yearout Energy Services Company, LLC, (hereinafter called "Contractor"), and the Town of Eagle, CO (hereinafter called the "Political Subdivision").

RECITALS

WHEREAS, authority for the Political Subdivision to enter into this Contract exists in the law, including **§29-12.5-101, C.R.S.** and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision; and

WHEREAS, required approvals, clearance and coordination have been accomplished by Political Subdivision, to enter into a contract for the design and implementation of energy analysis and recommendations pertaining to measures that would significantly increase Utility Cost Savings, Operations and Maintenance Cost Savings, and Vehicle Fleet Operational and Fuel Cost Savings, pursuant to **§29-12.5-101, C.R.S.**; and

WHEREAS, the Contractor or other entity and the Political Subdivision entered into a certain Investment Grade Audit (IGA) Contract pursuant to **§29-12.5-102, C.R.S.**, whereby the Contractor or other entity provided an analysis and recommendations in the form of an IGA Report and an Energy Performance Contracting (EPC) Project Proposal. Such report and project proposal provided: estimates of (i) the amounts by which Utility Cost Savings and Operation and Maintenance Cost Savings would increase and (ii) all costs of such Utility Cost-Savings Measures or Facility Improvement Measures (FIMs), including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service or estimates of (i) the amounts by which Vehicle Fleet Operational and Fuel Cost Savings would increase and (ii) all costs of such Vehicle Fleet Operational and Fuel Cost-Savings Measures, set forth in **§29-12.5-102(2), C.R.S.**; and

WHEREAS, the Contractor or other entity was selected by the Political Subdivision as the entity to analyze and recommend measures to significantly increase utility cost, operation and maintenance cost, and vehicle fleet operational and fuel cost savings, through an IGA, pursuant to competitive negotiations; and

WHEREAS, the Political Subdivision has approved Contractor's or other entity's analyses and recommendations in the IGA set forth in **§29-12.5-102, C.R.S.**; and

WHEREAS, the analysis and recommendations provided by the Contractor or other entity pursuant to the IGA indicate that the expected annual payments by the Political Subdivision required under this Contract, or as required in a contract with the Political Subdivision and any Third-Party Lessor, which payments shall include any annual maintenance costs and annual fees for measurement and verification per statute, for the implementation of one or more Utility Cost-Savings Measures or FIMs is required to be equal to or less than the sum of the Utility Cost Savings and Operation and Maintenance Cost Savings achieved by the implementation of such Utility Cost-Savings Measures and FIMs on an annual basis; and

WHEREAS, the Contractor or other entity and the Governing Body of the Political Subdivision have reviewed the Energy Performance Contract Project Proposal, which was derived from the IGA Report, in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the Colorado Energy Office (CEO), and created a finalized EPC Description of Work (**Schedule B**), and that all the necessary information has been incorporated into the appropriate EPC schedules to complete the Work; and

WHEREAS, the Contractor is either (i) the same entity that performed the IGA and is therefore exempt from any additional competitive bidding or procurement provisions, pursuant to **§29-12.5-103(1)(a), C.R.S.**, or (ii) not the same entity that performed the IGA and was selected for performance of this Contract pursuant to negotiation requirements, and applicable competitive bidding or procurement provisions; and

NOW, THEREFORE: in consideration of the premises and mutual agreements and covenants hereinafter set forth,

and intending to be legally bound, the Political Subdivision and the Contractor hereby agree to the terms and conditions in this Contract.

EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be effective or enforceable until it is authorized and approved by the Governing Body (defined below in Article 1) of the Political Subdivision, by applicable resolution, ordinance or other authorizing action of the Governing Body, and executed by a duly authorized representative of the Political Subdivision, as set forth in such resolution, ordinance or other authorizing action (defined below as the "Principal Representative"), on the date set forth in Section 28 hereof in the signature block of the Political Subdivision (the "Effective Date"). The Political Subdivision shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay or reimburse the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract, except that the Principle Representative may make any payments for work that was completed under a properly executed contract for an investment grade audit that are to be paid under this contract in accordance with the terms of the investment grade audit contract.

All references in this Contract to "Article," "Section," "Subsections," "Exhibits" or other "attachments," whether spelled out or using the § symbol, are references to Articles, Sections, Subsections, Exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

1. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

- A. Adjusted-Baseline Energy**
"Adjusted-Baseline Energy" means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**
"American Society of Heating, Refrigeration, and Air Conditioning Engineers" or "ASHRAE" means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work and the IGA Project Proposal Report.
- C. Baseline Energy**
"Baseline Energy" means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**
"Baseline Period" means the period of time chosen to represent operation of the facility or system before implementation of a Utility Cost-Savings Measure or any applicable FIM, as defined herein. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.
- E. Baseline**
"Baseline" means and pertains to the baseline period.
- F. Business Day**
"Business Day" means any day in which the Political Subdivision is open and conducting business, but shall not include Saturday, Sunday or any holidays observed by the Political Subdivision.
- G. Colorado Open Records Act (CORA)**
"CORA" means the Colorado Open Records Act, **§§24-72-200.1 et seq., C.R.S.**
- H. Commissioning**
"Commissioning" means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Political Subdivision's functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.
- I. Compensation**
"Compensation" means the funds payable to the Contractor by the Political Subdivision for the performance of the Contractor's obligations hereunder, including, but not limited to, the Project and the

M&V Services.

J. Contingency Funds

“Contingency Funds,” if applicable, means the moneys of the Political Subdivision not included in the Fixed Limit of Construction Cost and budgeted, appropriated and encumbered for Project contingency purposes in order that the Political Subdivision may use such moneys to pay to the Contractor, any other contractor through a Separate Contract constituting a portion of the Project Work as determined and authorized by the Governing Body, or any Third-Party Lessor. Contingency Funds could be used in the event of construction cost budget overage, if the Principal Representative, upon the authorization of the Governing Body, determines to add to or change the Contractor’s Scope of Work, hire a contractor for special services (example-environmental remediation) or reduce the Political Subdivision’s obligation to any Third-Party Lessor, all pursuant to **Article 6(C)** and **Article 6(J)**.

K. Construction Commencement Date

“Construction Commencement Date” means the date the Principal Representative issues a written Notice to Proceed to Commence Construction Phase form.

L. Construction Documents

“Construction Documents” means the documents set forth in **Article 6(A)**.

M. Construction Term

“Construction Term” means the period of time in which Contractor shall complete the Project, pursuant to **Article 6(F)**.

N. Contract Documents

“Contract Documents” means this Contract; the Exhibits; the Schedules; and the Construction Documents. **Article 25** and **Article 26**, respectively, list the Exhibits and Schedules attached hereto and incorporated by reference herein.

O. Contractor’s Intellectual Property

“Contractor’s Intellectual Property” means any formulas, patterns, devices, secret inventions or processes, copyrights, patents, or other intellectual property purchased, licensed or developed by Contractor prior to or outside of this Contract or purchased, licensed or developed by Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

P. Contract Term

“Contract Term” means the definition set forth in **Article 2(B)**.

Q. Cost-Weighted Average Service Life

“Cost-Weighted Average Service Life” means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each Utility Cost-Savings Measure or FIM (excluding the audit cost and Political Subdivision’s contingency), and the total cost of all the measures. The formula is the sum of each measure cost divided by the total cost multiplied by its service life. $\text{Cost-Weighted Average Service Life} = \sum \text{each measure} \div \text{total cost} \times \text{service life}$.

R. C.R.S.

“C.R.S.” means the Colorado Revised Statutes, as amended.

S. Deliverable

“Deliverable” means any document, material, data, information, specification or other deliverable that results from or is provided through the Services or that Contractor is required to deliver to the Principal Representative under this Contract, the Exhibits, Schedules or other document or report which is required to be delivered by Contractor to the Principal Representative pursuant to this Contract and is created after the Effective Date.

T. Design Documents

“Design Documents” or “DDs” means documents supplied by Contractor consisting of drawings, specifications, and other documents that fix and describe the size and character of the entire Project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate, and include design plans and documentation for each Utility Cost-Savings Measure or FIM that may become part of the Project, and as further described in **Article 5(C)**.

U. Energy

"Energy" means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility charged service.

V. Energy Conservation Measure

"Energy Conservation Measure" or "ECM" means an Energy Saving Measure or Utility Cost-Savings Measure as defined in **§29-12.5-101(4)** and **§29-12.5-101(9)**, C.R.S., respectively. An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

W. Energy Cost-Savings Contract

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract as defined in C.R.S. **29-12.5-101 (2.5)**.

X. Energy Cost-Savings Measure

"Energy Cost-Savings Measure" means a Utility Cost-Savings Measure or a Vehicle Fleet Operational and Fuel Cost-Savings Measure. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost-savings measures.

Y. Energy Performance Contract

"Energy Performance Contract" ("EPC") as defined in **§29-12.5-101(3)**, C.R.S., is a contract for evaluations, recommendations or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost-Savings, which:

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the Political Subdivision contracting for the Energy Cost-Savings Measures;
- iii. Requires the party entering into the Energy Performance Contract with the Political Subdivision to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year;
- iv. Requires a minimum of one-tenth of payments by the Political Subdivision to be made within the first two years. Requires remaining payments by the Political Subdivision to be made within 12 years after the date of the execution of the contract, except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the contract is made, not to exceed 25 years.

Z. Energy Service Company

"Energy Service Company" or "ESCO" means the energy service company entity entering into a contract to design and construct the Project with the Political Subdivision. The Energy Service Company may also be referred to as "Contractor" in this Contract or in related schedules, exhibits, attachments, contract modification or procedural documents. The ESCO may be the architect/engineer for the Utility Cost-Savings Measures or may contract out these professional services with approval of the Governing Body.

AA. Equipment

"Equipment" means the equipment, systems and associated services set forth on **Schedule B**, together and with any and all includes all replacements, repairs, restorations, Modifications and improvements of or to such Equipment.

BB. Escrow Agreement

"Escrow Agreement" means the escrow agreement, if applicable, executed by the Political Subdivision, the Lessor, if any, and the Escrow Fund Custodian, pursuant to which the Escrow Fund is established and administered.

CC. Escrow Fund

"Escrow Fund" means the fund, if applicable, established under the Escrow Agreement

DD. Escrow Fund Custodian

"Escrow Fund Custodian" is indicated in **Article 3D**.

EE. Evaluation

"Evaluation" means the process of examining the Contractor's Work and rating such Contractor's Work based on criteria established in this Contract.

FF. Excluded Materials and Activities

"Excluded Materials and Activities" means asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, pollutants, hazardous wastes, hazardous materials, or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof.

GG. Facility

"Facility " or "Facilities" means any building or utility owned or operated by the Political Subdivision.

HH. Facility Improvement Measure

"Facility Improvement Measure" or "FIMS" is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an EPC. A FIM may be an activity requested by the Political Subdivision, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an EPC. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

II. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines

"Federal Energy Management Program ("FEMP") Measurement and Verification (M&V) Guidelines" means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP (definition below). The FEMP M&V Guidelines represents a specific application of the IPMVP to EPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

JJ. Finance Agreement Term

"Finance Agreement Term" means the original term and all renewal terms of any Lease-Purchase Agreement or any other financing or funding agreement of the Political Subdivision for the costs of this Contract.

KK. Fiscal Year

"Fiscal Year" means a 12-month period beginning on January 1st of each calendar year and ending on December 31st.

LL. Fixed Limit of Construction Cost

"Fixed Limit of Construction Cost" or "FLCC" means the total amount to be paid by the Political Subdivision or any Third-Party Lessor to Contractor for Contractor's satisfactory performance, construction, and installation of all elements of the Work, which shall include, but not be limited to, costs and expenses, permits, performance bonds, materials, labor, auditing, IGA, design, engineering, project construction management costs, commissioning, training, profit, travel expenses, communications, code work, including review, inspection, and compliance unless otherwise noted, acquisition and installation of Equipment. The Fixed Limit of Construction Cost is included as a part of the MCP and all costs comprising the Fixed Limit of Construction Cost shall be identified in **Schedule F**, which shall be executed after this Contract is effective. The Fixed Limit of Construction Cost does not include any Contingency Funds or the M&V Fee.

MM. Governing Body

“Governing Body” means the governing body of the Political Subdivision, a governing body (city or town council, board of trustees, etc.) of any municipality or home rule county, a board of county commissioners of any county, a board of directors of any special district, or a board of education of any school district as defined in **§29-12.5-101(1), C.R.S.**

NN. Guarantee

“Guarantee” means the warranty and guarantee made by the Contractor in **Article 14** hereof that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C** which shall be equal to or greater than the Political Subdivision’s annual payments used to repay the project funding, as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in Contractor directly remunerating the Political Subdivision the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the Governing Body’s consent, which shall not be unreasonably withheld, Contractor may implement additional Utility Cost-Savings Measures or FIMs, at no cost to the Political Subdivision, which may generate additional annual cost savings in future years of the Performance Period to offset future Guaranteed Annual Cost Savings shortfall.

OO. Guarantee Period

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the Contractor set forth in **EPC Schedule D**.

PP. Guaranteed Annual Cost Savings

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings, Guaranteed Annual Operations and Maintenance Cost Savings, and Annual Vehicle Fleet Operational and Fuel Cost Savings guaranteed by Contractor resulting from the Project that shall occur for each year of the Guarantee Period pursuant to **Schedule C**. Guaranteed Annual Utility Cost Savings shall be determined by Contractor’s Measurement and Verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in **Schedule C**.

QQ. Guaranteed Annual Operations and Maintenance Cost Savings

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the Political Subdivision’s operation and maintenance budget.

RR. Guaranteed Annual Utility Cost Savings

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in **Schedule C**.

SS. Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings

“Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings” means measurable and verifiable annual cost savings resulting from the reduction of vehicle operations, fuel and maintenance costs.

TT. International Performance Measurement and Verification Protocol

“International Performance Measurement and Verification Protocol” or “IPMVP” means the current document prepared by the Efficiency Valuation Organization on the Effective Date of the IGA contract. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the Investment Grade Audit Report and Energy Performance Contract Project Proposal (**reference §7**).

UU. Investment Grade Audit

“Investment Grade Audit” or “IGA” means a detailed audit of certain Facilities of the Political Subdivision, including the Premises, conducted by the Contractor or another party pursuant to the IGA Contract, as provided in **§29-12.5-102, C.R.S.** and in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the CEO, which serves as the basis for this Energy Performance Contract.

VV. Investment Grade Audit Contract

“Investment Grade Audit Contract” (IGA) means that certain contract between the Contractor and the

Political Subdivision and entered into pursuant to **§29-12.5-102, C.R.S.**, and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Performance Contract to provide for the implementation of Utility Cost Savings Measures, Facility Improvement Measures, and Operation and Maintenance Cost Savings Measures in Facilities owned or leased by the Political Subdivision and vehicle fleet operational and fuel cost saving measures at the Premises of the Political Subdivision.

WW. kW

"kW" means "Kilowatt" (abbreviation)

XX. kWh

"kWh" means "Kilowatt-hour" (abbreviation)

YY. Lease Purchase Agreement

"Lease Purchase Agreement" means any annually renewable lease purchase financing agreement entered into by the Political Subdivision, as lessee of the Equipment, and a Third-Party Lessor, as lessor of the Equipment and Services, for the financing of the Utility Cost-Savings Measures and FIMs as a result of Contractor's work pursuant to this Contract (constituting the capital project so financed), as authorized pursuant to **§29-12.5-103, C.R.S.**

ZZ. Material Change

"Material Change" means any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature as determined by the Governing Body or the Principal Representative, if authorized to do so by the Governing Body, and the Contractor, to increase or decrease Guaranteed Annual Cost Savings, as defined in **PP** above, in accordance with the provisions and procedures set forth in **Schedule B** and is correlated with such change in energy or water usage, and as described in **Article 17**.

AAA. Maximum Contract Price

"Maximum Contract Price" or "MCP" means the maximum amount of total allowable costs under this Contract, as set forth in **Article 4(A)**, which shall be the total amount paid by the Political Subdivision, or Third-Party Lessor on behalf of the Political Subdivision, to Contractor, and which shall include, but not be limited to, the Fixed Limit of Construction Cost, the Measurement and Verification Fee, and any Contingency Funds. It is the maximum amount payable to the Contractor pursuant to this Contract.

BBB. Measurement and Verification

"Measurement and Verification" or "M&V" means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy use. Instead savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current International Performance Measurement and Verification Protocol ("IPMVP"), as may be amended by the Efficiency Valuation Organization on the Effective Date of this contract. The CEO Measurement and Verification Policy may allow alternative verification standards as appropriate for select Utility Cost-Savings Measures or FIMs.

CCC. M&V Commencement Date

"M&V Commencement Date" means the first day of the month following the completion by Contractor and the Principal Representative's submittal of Notice of Final Acceptance.

DDD. M&V Fee

"M&V Fee" means an annual fee paid to Contractor by the Political Subdivision for Contractor's satisfactory performance of the M&V Services, as set forth in **Article 13**. The M&V Fee is included as a part of the EPC Maximum Contract Price.

EEE. M&V Plan

"M&V Plan" defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in **EPC Contract Schedule D**.

FFF. M&V Services

"M&V Services" means Services or activities relating to the measurement and verification by Contractor of the efficiency and effectiveness of the Project, pursuant to this Contract and the CEO Measurement and Verification Policy as applied.

GGG. M&V Term

"M&V Term" has the meaning as described to it in **EPC Contract §13**.

HHH. MMBtu

"MMBtu" means 1 Million British thermal unit (abbreviation).

III. Modification (of Equipment)

"Modification of Equipment" means a field installable upgrade, feature, addition, accessory or modification to Equipment, which is made by or for the original manufacturer of such Equipment.

JJJ. Modification (to the contract)

"Modification to the Contract" means a written (i) amendment to this Contract signed by both parties or (ii) Change Order executed in accordance with **Schedule A**.

KKK. Open Book Pricing

"Open Book Pricing" means "Open Book Pricing" as set forth in **Article 6(H)**.

LLL. Operation and Maintenance Cost Savings

"Operation and Maintenance Cost Savings" as defined in **§29-12.5-101 (4.5), C.R.S.**, means the measurable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

MMM. Personally Identifiable Information (PII)

"PII" means personally identifiable information including, without limitation, any information maintained by the Political Subdivision about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in **§24-72-501, C.R.S.**

NNN. Political Subdivision Confidential Information

"Political Subdivision Confidential Information" means any and all Records of the Political Subdivision not subject to disclosure under CORA. Confidential Information of the Political Subdivision shall include, but is not limited to PII, Tax Information, and Political Subdivision personnel records not subject to disclosure under CORA.

OOO. Premises

"Premises" is as set forth in **Article 5(A)**.

PPP. Project

"Project" means Contractor's design, acquisition, construction, and installation of the Utility Cost-Savings Measures and FIMs, and all Equipment and Services related thereto, as set forth in **Schedule B** and the Contract Documents, but does not include M&V Services.

QQQ. Rebate

"Rebate" means moneys used for Contractor's compensation that are not the moneys of the Political Subdivision or moneys from a Third-Party Lessor, including solar REC's and utility rebates, all as described in **Schedule B** and on **Schedule G**.

RRR. Review

"Review" means the examination by the Principal Representative of the Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with this Contract.

SSS. Schedule A

"Schedule A" means **Schedule A** to this Contract, attached hereto as General Conditions of the Energy Performance Contract.

TTT. Schedule B

"Schedule B" means **Schedule B** to this Contract, attached hereto as EPC Description of Work. The **Schedule B** is developed from information in the EPC Project Proposal. **Schedule B** includes, but is not limited to: the final list of facilities that define the Premise, final list of improvements, installed equipment and upgrades, training, start-up, commissioning, and design/construction schedule. **Schedule B** details the cost for the Work from initial design to the start of the Guarantee Period. **Schedule B** includes the financial performance including any rebates, grants, Political Subdivision provided funds, and the potential third-party financial amount that totals up to the Maximum Contract Price.

UUU. Services

"Services" means all services performed by Contractor hereunder, including, but not limited to, engineering, design, project management, construction management, design, training, and M&V Services, and tangible material produced either separately or in conjunction with the Work performed.

VVV. Simple Payback

"Simple Payback" means the length of time, typically presented in years, required to recover the cost of a measure or project.

WWW. Tax Information

"Tax Information" means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

XXX. Third-Party Lessor

"Third-Party Lessor" means a third-party entity entering into a Lease Purchase Agreement, as lessor, with the Political Subdivision, as lessee, for the lease purchase financing of the Equipment and the Services pursuant to this Contract.

YYY. Utility or Utilities

"Utility" or "Utilities" means the water, sewer services, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Governing Body of the Political Subdivision.

ZZZ. Utility Cost Savings

"Utility Cost Savings" means the definition set forth in **§29-12.5-101(7), C.R.S.**, is the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Utility Cost-Savings Measures or FIMs when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

AAAA. Utility Cost-Savings Contract

"Utility Cost-Savings Contract" means an Energy Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment set forth in **§29-12.5-101(8), C.R.S.**

BBBB. Utility Cost-Savings Measure

"Utility Cost-Savings Measure" means the definition set forth in **§29-12.5-101(9), C.R.S.**, is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems
- ii. Storm windows and doors, multi-glazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption
- iii. Automatic energy control systems
- iv. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants
- v. Caulking or weather stripping
- vi. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system
- vii. Energy recovery systems
- viii. Renewable energy and alternate energy systems
- ix. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings
- x. Devices that reduce water consumption or sewer charges
- xi. Changes in operation and maintenance practices
- xii. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel

- sources, and water
- xiii. Indoor air quality improvements that conform to applicable building code requirements
- xiv. Daylighting systems
- xv. Building operation programs that reduce utility and operating costs including computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities
- xvi. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules
- xvii. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes
- xviii. Vehicle fleet operational and fuel cost savings
- xix. When an energy saving measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy, as set forth in **§29-12.5-103(3), C.R.S.**

Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

CCCC. Vehicle Fleet Operational and Fuel Cost Savings

“Vehicle Fleet Operational and Fuel Cost Savings” means the definition set forth in **CRS§29-12.5-101(10)**, which is a measurable decrease in the operation and maintenance costs of Political Subdivision vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

DDDD. Vehicle Fleet Operational and Fuel Cost-Savings Contract

“Vehicle Fleet Operational and Fuel Cost-Savings Contract” in the definition set forth in **§29-12.5-101(11), C.R.S.**, means an Energy Performance Contract or any other agreement in which Vehicle Fleet Operational and Fuel Cost Savings are used to pay for the cost of the vehicle or associated capital investments.

EEEE. Vehicle Fleet Operational and Fuel Cost-Savings Measure

“Vehicle Fleet Operational and Fuel Cost-Savings Measure” is defined in **§29-12.5-101(12), C.R.S.**, means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

- i. Vehicle purchase or lease costs either in full or in part;
- ii. Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy performance contract.

FFFF. Work

“Work” means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

GGGG. Work Product

“Work Product” means the tangible or intangible results of the Contractor’s Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the Contractor’s Intellectual Property.

Any other term used in this Contract that is defined in a Schedule shall be construed and interpreted as defined in that Schedule.

2. ORGANIZATION AND TERM

A. Contract Phases

This Contract shall be performed in accordance with its provisions and contains the following phases:

- i. Funding (**Articles 3 and 4**)
- ii. Pre-Construction (**Article 5**)
- iii. Construction (**Article 6, 7, and 9**)
- iv. Start-up, Commissioning, and Acceptance (**Article 8**)

- v. Training (**Article 10**)
- vi. Measurement and Verification (**Article 13**)

B. Contract Term

Contractor shall complete the Work and its other obligations as described herein on or before

December 31st, 2027

The Political Subdivision shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract. The term of this Contract ("Contract Term") shall be divided into three (3) separate components:

- i. The "Planning Term," shall commence on the Effective Date and upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Design Phase under **Article 4(H)** and terminate upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase for the last improvement per the Construction and Installation **Article 6(B)**
- ii. The "Construction Term," shall commence upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase under **Article 6(E)**, and terminate no more than

367 days

after the Construction Commencement Date, unless sooner terminated as provided in this Contract

- iii. The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute (**§29-12.5-101(3)(c), C.R.S.**) and no greater than the Finance Agreement Term. The M&V Term shall terminate pursuant to **Schedule D** unless sooner terminated as provided in this Contract.

3. FUNDING

A. Source of Funds

The Political Subdivision intends to obtain

\$3,020,490

in funds for the MCP required under this Contract by entering into a personal property annually renewable lease purchase financing arrangement with a Third-Party Lessor or in such other manner as the Governing Body of the Political Subdivision, in its sole discretion, shall deem authorized by resolution or ordinance pursuant to and within the limitations of applicable constitutional, statutory (which may include **§29-12.5- 101(3)(b), C.R.S.**) and code provisions pertaining to the Political Subdivision. The total amount of funds that the Governing Body of the Political Subdivision will seek to acquire from a Third-Party Lessor will be

\$0.00

If Political Subdivision is unable to obtain funds in any manner for the entire amount of the MCP, the Governing Body of the Political Subdivision and the Contractor may negotiate a reasonable reduction in the Project scope, price, and Guarantee in a manner consistent with any available funds or the Governing Body of the Political Subdivision may unilaterally terminate this Contract, in the sole discretion of the Governing Body of the Political Subdivision. If the Political Subdivision is unable to obtain financing for the entire amount of the MCP and the Parties are unable to revise the Project scope to obtain available funds within sixty (60) days of the Effective Date, either Party may terminate this Contract upon 10 days written notice to the other Party and such termination shall not be a default under this Contract. Upon termination, neither Party shall have any obligation to the other Party under this Contract, except for those provisions which by their terms survive any such termination, as provided herein.

B. Political Subdivision Funds

The Political Subdivision will provide all or a portion of the moneys for the MCP required under this Contract in the amount of

\$3,020,490

from existing appropriations specifically budgeted, appropriated and encumbered for this purpose as full or partial compensation for the cost of the Project as described in

Schedule B and indicated on **Schedule G** to be paid to Contractor as reimbursement pursuant to **Schedule A**.

C. Escrow Account

Any funds obtained by the Political Subdivision from a Third-Party Lessor shall be deposited into an escrow account established on the Political Subdivision's behalf. The Principal Representative shall be authorized by the Governing Body of the Political Subdivision to direct the Escrow Fund Custodian, as described in **Article 3(D)**, to compensate Contractor for the Work performed by Contractor and accepted in writing by the Principal Representative in accordance with **Article 4** and **Schedule A**, and the Escrow Fund Custodian will make payment from the escrow account in accordance with procedures set forth in the Lease Purchase Agreement, this Contract, and any escrow agreement. Final payment shall be made to Contractor upon the Principal Representative's submittal of the Notice of Final Acceptance of the Project. Any proceeds from the escrow account shall accrue to the Political Subdivision.

D. Escrow Fund Custodian

The Escrow Fund Custodian is hereby identified as:

INSERT NAME: N/A
INSERT TITLE: N/A
INSERT ADDRESS: N/A
INSERT PHONE NUMBER: N/A
INSERT EMAIL: N/A

Escrow Fund Custodian is subject to change at any time, without notice, and at the Principal Representative's discretion. The Principal Representative shall notify Contractor and the Third-Party Lessor within 15 days of any change in the Escrow Fund Custodian.

E. Energy Policy Act

The Political Subdivision agrees that, for the Work to be performed herein, Contractor may in consultation with the Principal Representative, determine which, if any, entity shall be the "designer(s)" as that term is identified in the Energy Policy Act of 2005, and which entity(s) shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under Section 179(d) of the Energy Policy Act of 2005, any tax benefit associated with the Work. Upon Notice of Final Acceptance, the Governing Body of the Political Subdivision, at its sole discretion, may authorize the Principal Representative to execute a Written Allocation including a Declaration related to Section 179D of the Internal Revenue Code. The Contractor may prepare the Declaration and all accompanying documentation.

4. COMPENSATION

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative will, or will direct any Escrow Fund Custodian to, in accordance with the provisions of this **Article 4**, pay Contractor in the amounts and using the methods set forth below:

A. Maximum Contract Price

The MCP from Schedule G is:	\$3,020,490
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The MCP reflects the maximum amount of compensation payable to Contractor pursuant to this Contract. The MCP may include, without limitation,

The cost of the IGA in the amount of:	\$133,850
The Fixed Limit of Construction Cost of:	\$3,020,490
The M&V Fees in an amount not to exceed:	\$20,725
And all Contingency Funds in the amount of:	\$105,982

If any Political Subdivision funds are used pursuant to **Article 3(B)** of this Contract, the maximum amount of the MCP available for payment by the Political Subdivision during any Fiscal Year of the Contract term shall be as follows:

*(Match this schedule with **Schedule G** and **Schedule B**, but do not use if amount in Political Subdivision provided capital contribution is zero)*

\$3,020,490 in fiscal year 2024, ending December 31, 2024

B. Changes to MCP

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative may decrease the amount available for the MCP with the mutual consent of the Contractor and assuring that the decrease in the MCP does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. The decrease in MCP may be based on the actual costs of labor and materials to Contractor. The MCP shall not be increased without an amendment to this Contract, in accordance with Political Subdivision Fiscal Rules.

C. Invoicing

Contractor shall invoice the Political Subdivision in the format and manner required by the Principal Representative. Contractor shall use the categories in **Schedule F** to demonstrate all costs categories, shall demonstrate all subcontractor costs, and shall allow the Principal Representative to review any records relating to the Project. Contractor shall provide measure-specific information and Project-level information in **Schedule F**. For each Utility Cost-Savings Measure and FIM and for the Project the profit shall be clearly explained and referenced in each invoice. The M&V Services shall be invoiced separately in a format and manner as required by the Principal Representative.

D. Payments and Retainage

The Principal Representative will, or will direct any Escrow Fund Custodian to, compensate Contractor for Work done by Contractor pursuant to **Schedule A**. The Principal Representative shall withhold and release retainage amounts pursuant to **Schedule A** and as allowed by applicable law.

E. Availability of Political Subdivision Funds

The Political Subdivision cannot make commitments in this EPC that extend beyond the term of the current Fiscal Year. Therefore, Contractor's compensation beyond the current Fiscal Year is contingent upon the specific budgeting, appropriations and encumbrances by the Governing Body of the Political Subdivision, in its sole discretion, for the purpose of providing for the commitments in this EPC in subsequent Fiscal Years. If other funds are used to fund this Contract, in whole or in part, the Political Subdivision's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds specifically budgeted, appropriated and encumbered for this Contract and the Political Subdivision's liability for such payments shall be limited to the amount remaining of such encumbered funds. If Political Subdivision or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Governing Body of the Political Subdivision may terminate this Contract, in whole or in part, without further liability in accordance with the provisions hereof.

F. Erroneous Payments and Excess Funds

Payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and Contractor or by other appropriate methods and

collected as a debt due to the Political Subdivision. Such funds shall not be paid to any party other than the Political Subdivision.

G. Notice to Proceed to Commence Design Phase

If the Political Subdivision obtains funding from any and all sources in the amount of the MCP for the purposes set forth herein, upon terms and conditions satisfactory to the Governing Body of the Political Subdivision, in its sole discretion, or obtains funds sufficient for a revised Project scope, price, and Guarantee, if authorized by the Governing Body of the Political Subdivision, the Principal Representative shall deliver to Contractor a Notice to Proceed to Commence Design Phase instructing Contractor to commence with the Pre-Construction Services, as described in **Article 5**.

5. PRE-CONSTRUCTION SERVICES

A. Premises

The Premises is the Facilities owned or controlled by the Political Subdivision, as initially detailed on the IGA Contract Exhibit C and finalized in EPC **Schedule B**.

B. Professional Design Services

i. Qualifications

Design services shall be performed by properly licensed and qualified architects, engineers and other professionals selected and paid by Contractor, subject to review by the Principal Representative. The professional obligations of such persons shall be undertaken and performed on behalf of Contractor. Nothing contained herein shall create any contractual relationship with the Political Subdivision between Subcontractors, architects, engineers or suppliers. Prior to designating a professional to perform any of these services, Contractor shall submit the name, together with a resume of training and experience in the work of like character and magnitude to the Project being contemplated to the Political Subdivision. All Drawings, Specifications, calculations, certifications and Submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Political Subdivision shall be entitled to rely upon the adequacy, accuracy and completeness of such design services.

ii. Designation of Professionals

All Work performed by Contractor that constitutes the practice of architecture/engineering shall be performed by properly qualified and licensed professionals employed by Contractor and shall be performed in accordance with applicable Colorado law.

iii. Conflict of Interest

Consultant or subcontractor, not already approved by the Governing Body of the Political Subdivision, shall not be engaged to perform Work wherein a conflict of interest exists, as described in **Article 27(N)**, provided, however, that with full disclosure to the Governing Body of the Political Subdivision of such interest, the Governing Body of the Political Subdivision may provide a waiver, in writing, in respect to the particular consultant or subcontractor.

iv. Pre-construction Meeting

Contractor and its architect and/or engineer may attend pre-construction meetings, as deemed necessary by the Contractor and the Principal Representative and such additional meetings as the Principal Representative may request. All pre-construction meetings shall be scheduled by Contractor with the approval of the Principal Representative.

v. Minutes

Contractor shall record minutes of all meetings and distribute them to all participants of the meetings within 30 days after each meeting.

C. Design Documents

i. Based on the Scope of Work in **Schedule B** the Contractor shall prepare, for the Principal Representative's acceptance, the Design Documents (DDs) defined in **Article 1(K)**. The DDs may be waived or modified per Utility Cost-Savings Measure or FIM as mutually agreed in writing between the Parties. Such DDs may include the following, where applicable:

- a)** Analysis of the proposed Work and the structure as such relates to any laws, codes, ordinances, and regulations
- b)** As necessary, provide site development Drawings for each proposed Utility Cost-Savings Measure

- or FIM, defining the proposed scope of the Project. Include earthwork, surface development, and utility infrastructure as applicable
- c) Plans in one-line format of the proposed structural, mechanical, and electrical systems as necessary to define size, location and quality of Equipment, materials, and constructions, for each proposed Utility Cost-Savings Measure or FIM
- d) Floor plans including proposed equipment
- e) Cut-sheets and/or samples of proposed materials, equipment and system components
- f) Proposed architectural schedule, HVAC, plumbing and electrical fixture schedules
- g) Specifications, which, identifying conditions of the Contract, materials, and standards for each proposed Utility Cost-Savings Measure or FIM
- h) Design plans and documentation for each Utility Cost-Savings Measure or FIM that requires a design as agreed to with the Principal Representative
- i) Submittal of final Equipment List, Construction and Installation Schedule, Systems Start-up and Commissioning, Contractor's Maintenance Responsibilities, Political Subdivision's Maintenance Responsibilities, Contractors Training Responsibilities, and the Manifest of Ownership
- j) Submittal of an updated construction cost estimate as applicable, in substantially the same form as **Schedule F**
- ii. A code review is required to meet the local jurisdiction authority code procedure.
- iii. At the completion by Contractor and acceptance by the Principal Representative of the DDs, Contractor shall provide electronic or printed drawings and such other documents as necessary to fully illustrate the Design Development Phase to the Principal Representative. Electronic drawing files should be in a form acceptable to the Principal Representative.
- iv. Contractor shall be responsible for ensuring that the DDs, prepared by Contractor are in full compliance with applicable codes, regulations, laws and ordinances, including both technical and administrative provisions thereof. If Contractor deviates from such codes, regulations, law or ordinance, without written authorization from the State Buildings Program, Contractor, shall make such corrections in the Construction Documents as may be necessary for compliance.
- v. The Principal Representative shall notify Contractor of acceptance or denial of the DDs in writing within 10 days of receipt.

6. CONSTRUCTION

A. Construction Documents

The Construction Documents, if required, shall consist of the following:

- i. Final Construction Documents reviewed and approved by the Principal Representative in writing for constructability and code compliance
- ii. All Design Documents applicable to the Project
- iii. Any appendices, addenda, clarifications and allowances
- iv. All modifications issued pursuant to this Contract
- v. Construction and Installation Schedule
- vi. Finalized Schedule of Values

B. Construction and Installation Schedule

Contractor shall prepare a Construction and Installation Schedule, which shall provide the timetable for the execution and completion of the Project. Such Construction and Installation Schedule shall be subject to the approval of the Principal Representative, pursuant to **Schedule A**, and shall be consistent with previously issued schedules, not exceed time limits under the Contract Documents and shall provide a schedule for the entire Project, to the extent required by the Contract Documents.

C. Schedule of Values

Contractor shall prepare a schedule of the cost of construction, which shall be delivered to the Principal Representative for approval and which shall be in substantially similar format as the attached **Schedule F**, and which such Contractor-submitted **Schedule F** shall be subject to review and approval by the Principal Representative. The Schedule of Values shall include, without duplication:

- i. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of

the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project

- ii. The compensation for services and the cost of work provided by Contractor
- iii. All bond premiums and costs of insurance
- iv. All Design and drafting Services
- v. All other allowable compensable services pursuant to this Contract as approved by the Principal Representative
- vi. Contingency Funds if any

D. Approval and Completion of Construction Documents

Except as otherwise provided in this Section, the Construction Documents shall be subject to final approval by Principal Representative, on behalf of the Political Subdivision, and other reviewing authorities. The Principal Representative or written designee shall review documents submitted by Contractor and shall render decisions pertaining thereto without unreasonable delay. If authorized by the Governing Body of the Political Subdivision, the Principal Representative's approval shall be issued in the form of the Notice to Proceed to Commence Construction Phase.

E. Notice to Proceed to Commence Construction Phase

Upon receipt of Notice to Proceed to Commence Construction Phase, Contractor shall commence the Project, as described in **Article 1**, and **Schedule B**. Notice to Proceed to Commence Construction may be issued per Utility Cost-Savings Measure or FIM.

F. Construction Term

The Construction Term shall commence on the Construction Commencement Date and shall terminate upon the date according to **Article 2** or the date on which:

- i. Contractor has completed the Project Work
- ii. Contractor has finalized and delivered to the Principal Representative all necessary, updated, and final documents, including schedules, exhibits, and completed Punch Lists, at the Principal Representative's determination
- iii. Contractor has delivered to the Principal Representative a Notice of Substantial Completion, which indicates that Contractor has constructed, installed, and commenced operating the Utility Cost-Savings Measures or FIMs specified in **Schedule B**
- iv. The Principal Representative has inspected and accepted the Project, according to **Article 8** and **Schedule A**, including the design, construction, installation, and operation of the Project and accepted Contractor's submittal of a Notice of Substantial Completion as demonstrated by signing and executing such Notice of Substantial Completion
- v. The Principal Representative, on behalf of the Political Subdivision, has issued a Notice of Final Acceptance

G. Fixed Limit of Construction Cost

Contractor shall complete the Project and be reimbursed an amount not to exceed the Fixed Limit of Construction Cost per **Article 4(A)**. Contractor shall design and construct the Project within the price specified in this **Article 6(G)** and shall furnish all of the labor and materials to perform the Work for the complete and prompt execution of the Project in accordance with the Contract Documents. The Fixed Limit of Construction Cost includes all of Contractor's Project Work responsibilities, including acquisition of plumbing and electrical building permits and conducting code review. The Governing Body of the Political Subdivision may unilaterally decrease the amount available for the Fixed Limit of Construction Cost based on the actual costs of labor and materials to Contractor, with the mutual consent of the Contractor, and assuring that the decrease in the FLCC does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. However the Fixed Limit of Construction Cost and the Maximum Contract Price shall not be changed without an amendment or change order to this Contract, in accordance with EPC General Conditions and Fiscal Rules.

H. Cost Reporting

Contractor shall fully disclose all costs as per the Open Book Pricing requirements to the Political Subdivision through Applications for Contractors Payments and in such detail as the Principal Representative may request. Contractor shall maintain cost accounting records on authorized work

performed as per **Article 24(K)**. Such accounting records shall identify all costs for materials, labor, including all costs of subcontractor's, vendors, and services received during the Contract Term **Article 2B**. Upon request by the Principal Representative a list of hourly rates and position descriptions for labor or services provided by the Contractor and for all subcontractors and vendors and supply information on any other basis as specified by the Principal Representative. The Principal Representative may evaluate all cost through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable. Upon request by the Principal Representative, Contractor shall provide the Principal Representative complete access to such records at reasonable times and locations. The records shall be consistent with the Schedule of Values, **Schedule F**. Any disputes shall be subject to the terms of this Contract and **Schedule A**.

I. Progress Meetings

Contractor shall schedule and conduct regular progress meetings at which meetings the Principal Representative and Contractor shall discuss such matters as procedures, progress, schedule, costs, quality control and problems relating to the Project. Contractor shall record and distribute minutes of all such progress construction meetings within

30

days of the meeting.

J. Contingency Funds

If authorized by the Governing Body of the Political Subdivision, the Principal Representative may authorize the disbursement of Contingency Funds to Contractor through an EPC Contract Change Order, as described in **Schedule A**.

7. CONTRACTOR PERFORMANCE

A. Performance of Project

Contractor shall perform the Project in accordance with the Contract Documents. Contractor shall construct and install the Project in accordance with the Construction and Installation Schedule. Contractor shall supervise and direct the Project and be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project under this Contract, subject to the review and approval of the Principal Representative and the Construction and Installation Schedule. Contractor shall design, construct and install the Utility Cost-Savings Measures or FIMs. Before purchasing any major Equipment not specified within the Construction Documents, Contractor shall consult with, and if necessary, receive the written or electronic approval of the Principal Representative regarding the price, specifications, warranty, and manufacturer of the Equipment.

B. Contractor's Duty of Proper Performance

Contractor shall perform the Project so as to maintain and not degrade the structural integrity of the Premises or its operating systems. Contractor shall provide the Equipment and all Services, and complete all Work contemplated under this Contract with skill and diligence to the satisfaction of the Principal Representative and in strict accordance with the provisions of the Contract Documents.

C. Standards of Comfort

Contractor's performance of the Project shall maintain and provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality as described in this Contract **Schedule N** (Standards of Comfort).

D. Security

Contractor shall meet Political Subdivision requirements for security and access to the Premises.

8. START-UP, COMMISSIONING, INSPECTION, and ACCEPTANCE

A. Contractor, in conjunction with the Political Subdivision's selected personnel, shall direct the testing of installed utilities, operations, systems and Equipment for readiness.

B. Systems Startup and Equipment Commissioning

Contractor shall conduct systematic commissioning of all Equipment installed as part of the Work, in accordance with the procedures specified in System Start-up and Commissioning **Schedule Q**, **Schedule A**, any operating parameters of Equipment from Equipment manufacturers, and this Contract. Contractor agrees that **Schedule Q** shall follow and use as a standard the procedures and protocol for Commissioning

located in the document *Commissioning Guidelines for Energy Saving Performance Contracts for the Colorado Energy Office*, provided by the Political Subdivision. Contractor shall test the Project and the Equipment to ensure it is functioning in accordance and compliance with any published Specifications and this Contract and to determine if modified building systems, subsystems or components are functioning properly within the Project Work. Contractor shall provide notice to the Principal Representative of the scheduled test(s) and the Principal Representative and/or its designees may be present at any or all such tests.

C. Acceptance by Principal Representative

Contractor's Work shall be subject to acceptance by the Principal Representative pursuant to this Contract and **Schedule A**.

D. Correction of Deficiencies

Contractor shall correct all deficiencies in the operation of the Project and the Equipment. Prior to Principal Representative acceptance, Contractor shall also provide Principal Representative with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule B** and any subsequently necessary and accepted design or construction documents.

E. Inspection and Disputes

i. The Principal Representative may inspect the Work provided under this Contract at all reasonable times and places. If any Work does not conform to this Contract, the Principal Representative may require Contractor to perform the Work again in conformity with this Contract's requirements, with no additional compensation. When defects in the quality or quantity of Work cannot be corrected by re-performance, the Principal Representative may:

- a) Require Contractor to take necessary action to ensure that the future performance conforms to Contract requirements; and/or
- b) Equitably reduce the payment due Contractor to reflect the reduced value of the Work performed.

ii. Such remedies in no way limit the remedies available to the Political Subdivision in the termination provisions of this Contract, or remedies otherwise available at law. Disputes under this Contract shall be subject to the terms of this Contract and **Schedule A**.

9. ENVIRONMENTAL REQUIREMENTS

A. Excluded Material and Activities

Pursuant to its performance of the Project, Contractor may encounter, but is not responsible for, any work relating to Excluded Materials and Activities, as defined in **Article 1**. If performance of Work involves any Excluded Materials and Activities, the Principal Representative may terminate this Contract without penalty, liability, or responsibility, and no further performance may be required, per **Schedule A**. If, in the sole discretion of the Governing Body of the Political Subdivision, the Political Subdivision requires continued performance of this Contract, and the performance of any Project involves any Excluded Materials and Activities, the Political Subdivision shall perform or arrange for the performance of such work and shall bear the sole cost, risk, and responsibility therefore.

B. Discovery of Excluded Materials and Activities

i. Notice - Work Stoppage

If Contractor discovers Excluded Materials and Activities, Contractor shall immediately cease work and remove all Contractor personnel or Subcontractors from the site, and notify the Principal Representative. Contractor shall undertake no further work on the Premises except as authorized by the Principal Representative in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Political Subdivision or Contractor shall not constitute a default. In the event of such stoppage of Work by Contractor, the time for the completion of the Work shall be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result shall be added by Change Order.

ii. Other Hazardous Materials

Contractor shall be responsible for safely handling, installing, and/or disposing of any other hazardous or other materials that it may bring to the Premises.

iii. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

Contractor is specifically responsible for the proper handling and disposal of Polychlorinated Biphenyl (PCB) Ballasts and Mercury Lamps. Upon discovery of PCB Ballasts and Mercury Lamps, Contractor shall enter into an agreement with an approved PCB ballast disposal contractor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services such materials. All capacitors and asphalt potting compound materials removed from the PCB Ballasts shall be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction shall be provided by the approved facility to the Principal Representative. Contractor's responsibility shall be for the proper and legal management of any of the PCB Ballasts removed as a result of the Work. Contractor shall enter into an agreement with an approved Mercury Lamp disposal contractor who shall provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the Manifest of Ownership.

iv. Manifests of Ownership

The Political Subdivision will sign a Manifest of Ownership for any PCB Ballasts and Mercury Lamps encountered and removed from the Premises.

10. TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR

A. Training

Contractor shall provide training to the Principal Representative and to Political Subdivision personnel regarding operation of all new and upgraded Equipment. Training shall be conducted simultaneously with Project Work and commissioning Work and shall include, but not be limited to, any HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals per **Schedule R** (Contractor Training Responsibilities). All training performed by Contractor shall (i) meet the standards established by the Equipment manufacturers, (ii) be included in the Fixed Limit of Construction Cost and (iii) be completed per **Schedule R**, in order for the Principal Representative to issue a Notice of Final Acceptance of the Project.

B. Emissions Reductions Documentation and Reporting

Contractor shall include information about environmental savings (not any Guaranteed Annual Cost Savings as described in **Article 14(B)**) in each annual report and advise the Principal Representative about opportunities to achieve monetary benefit from such credits.

C. Application for Certifications

Contractor shall provide information related to **Schedule B** necessary for the Principal Representative to submit any required Federal, State, Local performance or other applicable Certifications.

11. MALFUNCTIONS AND EMERGENCIES

- A.** The Principal Representative will use its best efforts to notify Contractor within 24 hours of the Principal Representative's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any pre-existing energy related equipment that might materially impact the Guaranteed Annual Cost Savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation. When the Principal Representative exercises reasonable due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify any such conditions as having a material impact upon the Guaranteed Annual Cost Savings.
- B.** If such malfunction, interruption, or alteration occurs during the Contractor's One-Year Warranty period, Contractor shall use commercially reasonable efforts to respond to any such notice within 24 hours of receipt of notice, and shall promptly thereafter proceed with corrective measures. The Principal Representative will provide Contractor with written memorialization of any telephone notice within three business days after the notice was given.
- C.** Contractor shall provide a written record of all service work performed for each malfunction or emergency. This record shall indicate the reason for the service, description of the problem and the corrective action performed.
- D.** The Political Subdivision may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. The Political Subdivision agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which

may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Political Subdivision applies to the Premises generally.

12. OWNERSHIP

A. Ownership of Documents (Instruments of Service)

- i. Drawings, specifications and other documents, including those in electronic form, prepared by the Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants are Instruments of Service for use solely with respect to this Project. The Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.
- ii. Upon execution of this EPC and the contract between the Contractor's and the Contractor's Architect/Engineer, the Contractor's Architect/Engineer shall grant to the Political Subdivision a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the Political Subdivision, the Contractor's Architect/Engineer's Instruments of Service solely for the purposes of constructing, using and maintaining the Project for future alterations or additions to the Project. The Contractor's Architect/Engineer shall obtain similar nonexclusive licenses from the Contractor's Architect/Engineer's consultants consistent with this Agreement. If and upon the date the Contractor's Architect/Engineer is adjudged in default, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Political Subdivision to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections and additions to the Instruments of Service solely for the purposes of completing, using and maintaining the Project for future alterations or additions to the Project.
- iii. Any unilateral use by the Political Subdivision of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the Political Subdivision's sole risk and without liability to the Contractor's Architect/Engineer and the Contractor's Architect/Engineers consultants; provided, however, that if the Political Subdivision's unilateral use occurs for completing, using or maintaining the Project as a result of the Contractor's Architect/Engineer's default, nothing in this Article shall be deemed to relieve the Contractor's Architect/Engineer of liability for its own acts or omissions or default.

B. As-Built Drawings/Record Drawings

The Contractor's Architect/Engineer and its consultants shall, upon completion of the Construction Term, receive redline as-built Drawings from any Subcontractors or vendors. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed shall be incorporated by the Contractor's Architect/Engineer and its consultants into a Record Drawings document provided to the Political Subdivision in the form of an electro-media format and a reproducible format as agreed between the parties. The Contractor's Architect/Engineer shall also provide the Principal Representative with the as-built Drawings as received from the Contractor.

C. Ownership of Existing Equipment

- i. Property owned by the Political Subdivision located at the Premises on the Effective Date shall remain the property of Political Subdivision even if it is replaced or its operation made unnecessary by Work Contractor performs pursuant to this Contract. Contractor shall advise the Principal Representative in writing of any equipment and materials to be replaced at the Premises and the Principal Representative shall within 30 days designate in writing to Contractor which equipment and materials should not be disposed of off-site by Contractor.
- ii. The Principal Representative shall designate the location and storage for any equipment and materials that it designates to be disposed of by Contractor. Contractor shall dispose of all equipment and materials designated by the Principal Representative as disposable off-site and in accordance with all applicable disposal laws and regulations.
- iii. Except as otherwise indicated, Contractor shall not be obligated to dispose of or be responsible for any materials identified in **Article 4(O)**.

13. MEASUREMENT AND VERIFICATION PLAN

A. M&V Plan

Contractor shall provide the M&V Plan as required per the CEO Measurement and Verification Policy. The M&V Plan shall outline the M&V Option for each Utility Cost-Savings Measure or FIM. The Contractor M&V Plan is presented in **Schedule D** per the requirements of **Schedule D**.

B. M&V Services

Contractor shall provide M&V Services and all other services required to be performed by it pursuant to **Schedule D** during the M&V Term. Contractor agrees that **Schedule D** shall follow and use as a standard the procedures and protocol as stated in the CEO Measurement and Verification Policy.

C. Energy Usage Records and Data

The Principal Representative shall furnish, or authorize its utility suppliers to furnish, to Contractor or its designee upon Contractor's written request, all records and data regarding energy, water, or other utilities usage and related maintenance at the Premises no later than 45 days from date of request.

D. M&V Term

The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute **§29-12.5-101(3)(c), C.R.S.** and no greater than the Finance Agreement Term. Upon termination of the M&V Term, the Political Subdivision shall have no further liability or responsibility for any further payment to Contractor for M&V Services. Upon termination of the M&V Term the Contractor shall have no further liability or responsibility for any M&V Services or Guarantee.

E. M&V Fee

The Political Subdivision shall pay to Contractor for performance of the M&V Services a maximum not-to-exceed amount as indicated in **Article 4** and as specified in **Schedule D** and shall be included in the MCP. Cost savings to support the fee are guaranteed. The cost is not included in the financed amount. At the request of the Principal Representative, additional years of M&V may be added at a negotiated additional cost, and shall not be included in the MCP.

F. Payment

The Political Subdivision shall pay Contractor pursuant to **Articles 6 and 7**.

G. M&V Information Procedure

Measurement and Verification of Savings shall be verified as outlined in **Schedule D**.

H. Monitoring Equipment

Contractor shall provide all additional necessary equipment required to perform the M&V Services. The Contractor may utilize existing equipment, systems, utility meters if applicable or provide the necessary equipment as described in **Schedule D**.

I. Independent Monitor

The Political Subdivision, at its sole expense, may hire an independent third party monitor to review Contractor's measurement and verification reports, including verifying the prorated share of the Guarantee in any event of contract termination. The Political Subdivision shall pay the cost of any independent monitoring through a separate contract.

14. GUARANTEE

A. Guarantee

The Guarantee for the first year of the Guarantee Period is

\$47,356

as indicated on **Schedule C**. Contractor hereby warrants and guarantees that during the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C** which shall be equal to or greater than the Political Subdivision's annual and aggregate payments used to repay the project funding, as provided in **Schedule C** and as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet Guaranteed Annual Cost Savings in any year during the Guarantee Period shall be as defined in **Article 1**. Cost savings in excess of the Guaranteed Annual Cost Savings shall be solely retained by the Political Subdivision.

B. Sufficiency of Savings

Contractor hereby warrants, guarantees, and represents that the Guaranteed Annual Cost Savings is accurately represented in **Schedule C**.

C. Termination

If this Contract is terminated by Governing Body of the Political Subdivision for any reason, the Guarantee

shall be cancelled and Contractor shall have no further obligations hereunder, except to guarantee the Political Subdivision the prorated portion of the annual amount of Guarantee up to the date of termination. The prorated portion shall include any Savings incurred prior to the termination date. The Contractor shall have all of the remedies listed in this **Article 14** in addition to all other remedies set forth in other sections of this Contract and **Schedule A**.

15. MODIFICATION, UPGRADE OR ALTERATIONS OF EQUIPMENT

A. Modification of Equipment

Without Contractor's prior written approval, which shall not be unreasonably withheld, during the term of this Contract, the Political Subdivision shall not affix or install any accessory equipment or device on any of the Equipment if such addition changes or impairs the originally intended Savings, functions, value or use of the Equipment.

B. Upgrade or Alteration of Equipment

- i. During the performance of this Contract, Contractor may, subject to prior authorization of the Governing Body of the Political Subdivision, change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that: (a) Contractor complies with the Standards of Comfort, as set forth in this Contract, and services set forth in **Schedule N**; (b) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures enable Contractor to achieve a greater amount of energy and cost savings than the Savings, at the Premises; (c) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures are solely borne by Contractor and paid for with any Contingency Funds; and (d) any such action complies with State, federal and local law and is in the public interest of the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision. Any such upgrade or alteration shall not result in any additional cost to the Political Subdivision.
- ii. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described at that time in supplemental Schedules provided to the Governing Body of the Political Subdivision for approval; provided that any replacement of the Equipment shall, unless otherwise agreed, be new and shall reduce energy consumption at the Premises more than the Equipment being replaced. Contractor shall update any and all software it owns which is necessary for the operation of the Equipment. Upon the approval of the Governing Body of the Political Subdivision, all replacements of and alterations or additions to the Equipment shall become part this Contract and the Equipment described in **Schedule B**.

16. LOCATION AND ACCESS

Contractor Access

The Principal Representative shall provide access to the Premises for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours requested by Contractor that are acceptable to the Principal Representative. Contractor shall be granted immediate access to make emergency repairs or corrections as Contractor determines are needed. Contractor shall provide a written memorialization within three business days of the access specifying the emergency action taken, the reasons therefore, and the impact on the Premises.

17. MATERIAL CHANGES

A Material Change as defined could be the result of the Political Subdivision not fulfilling its responsibilities as listed in **Article 22** or from actions including to but not limited to one or more of the following:

- i. manner of use of the Premises by the Political Subdivision; or
- ii. occupancy of the Premises; or
- iii. modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
- iv. facility modifications, renovations, new construction, including the replacement, addition or removal in types and quantities of energy and water consuming equipment, including plug load items, used at the Premises; or

- v. changes in utility provider or utility rate classification; or
- vi. any other conditions other than climate affecting energy or water usage at the Premises.

A. Reported Material Changes; Notice by Political Subdivision

The Principal Representative shall use commercially reasonable efforts to deliver to Contractor a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 14 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to Contractor of Material Changes which result because of a bona fide emergency or other situation precluding advance notice shall be deemed sufficient if given by the Principal Representative within five business days after the Principal Representative discovers the event constituting the Material Change or receives actual knowledge thereof.

B. Other Adjustments

Contractor shall work with the Principal Representative to investigate, identify and correct any Material Changes that prevent the Savings from being realized. As a result of any such investigation, Contractor and the Principal Representative shall determine what, if any, adjustments to the baseline shall be made in accordance with the provisions set forth in **Schedule B** and **Schedule C**. Any disputes between the Political Subdivision and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule A**.

C. Force Majeure

Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "*Force Majeure*") include, but are not limited to: acts of God; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; or unavailability of parts, materials or supplies.

18. INSURANCE

Contractor shall obtain and maintain at all times during this Contract, insurance in the kinds and amounts as specified in **Schedule A**.

19. BREACH

A. Defined

In addition to any Breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner may constitute a Breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, may also constitute a Breach.

Each of the following events or conditions may constitute a Breach by Contractor:

- i. Contractor does not provide the Standards of Comfort and service set forth in **Schedule N** due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract; or
- ii. Any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made; or
- iii. The existence of any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman which is not released or otherwise cured within 30 days after notice of said filing.
- iv. Any failure by the Contractor to perform or comply with the terms and conditions of this Contract, including Breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to the Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract; or
- v. The creation or submittal by Contractor of any data related to this Contract that is intentionally

inconsistent or incorrect, or the inability to verify Contractor's reports regarding the Guarantee as determined by any independent third-party monitor retained by the Political Subdivision if such third-party monitor determines that such inability is due to intentional acts of Contractor. Except as provided herein, any creation or submittal by Contractor of any data related to this Contract that is inconsistent, incorrect, or unable to be verified shall be considered a breach and is subject to the cure period discussed herein; or

- vi. The Savings is less than the Guaranteed Annual Cost Savings and the Contractor fails to reconcile the difference as provided herein.

B. Notice and Cure Period

In the event of a Breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **Article 27**. If such Breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the Breach has not begun within 30 days and pursued with due diligence, the Political Subdivision may exercise any of the remedies set forth in **Article 20**. Notwithstanding anything to the contrary herein, the Principal Representative, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

20. REMEDIES

A. Remedies Not Involving Termination

If Contractor is in Breach under any provision of this Contract, the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Governing Body of the Political Subdivision without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the directive of the Governing Body of the Political Subdivision and the Political Subdivision shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that because to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the Political Subdivision; provided, that any denial of payment shall be reasonably related to the value to the Political Subdivision of the obligations not performed.

iv. Removal

Notwithstanding any other provision herein, the Political Subdivision may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the Principal Representative deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the Political Subdivision's best interest.

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the Political Subdivision's option **(a)** obtain for the Political Subdivision or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the Political Subdivision.

B. Termination Prior to M&V Commencement Date

If Contractor is in Breach under any provision of this Contract, in addition to all other remedies set forth in other sections of this Contract and **Schedule A**. The Political Subdivision may terminate this entire Contract or any part of this Contract as provided herein or pursuant to **Schedule A**. The Political Subdivision may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. Exercise by the Political Subdivision of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

To the extent specified in any termination notice, Contractor shall complete and deliver to the Principal Representative for the records of the Political Subdivision all Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the Governing Body of the Political Subdivision, Contractor shall assign to the Political Subdivision all of Contractor's right, title, and interest under such terminated orders or subcontracts; provided that Contractor's obligations with respect to Contractor's Intellectual Property are set forth in **Article 12** above. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision. All Work Product, at the option of the Governing Body of the Political Subdivision, shall be delivered by Contractor to the Political Subdivision and shall become the Political Subdivision's personal property.

C. Termination of M&V Term

Notwithstanding anything to the contrary herein, the Governing Body of the Political Subdivision may terminate this Contract after the first three years of the M&V Term, and if so terminated, Contractor shall have no further obligations hereunder thereafter.

21. REPRESENTATIONS AND WARRANTIES

A. Representations

Contractor makes the following specific representations and warranties, each of which was relied on by Political Subdivision in entering into this Contract.

i. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

ii. Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the Political Subdivision, Contractor shall provide the Principal Representative, for the records of the Political Subdivision, with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

iii. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the Political Subdivision or other adjustment in MCP. Additionally, the Contractor shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any

such similar requirements necessary for Contractor to properly perform the terms of this Contract is an Event of Default by Contractor and constitutes grounds for termination of this Contract. Contractor shall use Subcontractors who are qualified and licensed in the State of Colorado to perform the work so subcontracted pursuant to the terms hereof.

The Equipment is or shall be compatible with, or functional with, and or an upgrade to all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components shall materially adversely affect each other as a direct or indirect result of Equipment installation or operation except in cases where that Principal Representative has directed, or approved, Contractor to install such equipment.

That Contractor is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the installation and perform its obligations under this Contract.

B. Warranties

The warranties set forth in this section and such other warranties as may be set forth in this Contract are a part of the minimum work requirements of this Contract and all remediation or other actions required by such warranties shall be performed or delivered without additional cost to the Political Subdivision.

i. Warranties Generally Applicable

In addition to the Warranties provided in **Schedule A**, during the Construction phase, **§2A**, of this Contract and for a period of one year following the Principal Representative's submission of either the Notice of Substantial Completion or Notice of Partial Substantial Completion for each Utility Cost-Savings Measure or FIM, whichever is longer, Contractor warrants that:

- a) The Work shall meet the Specifications set forth in the Contract Documents and be acceptable to the Political Subdivision;
- b) There are not any pending suits, claims, or actions of any type with respect to the Equipment or Work;
- c) All Equipment and Work provided are free and clear of any liens, encumbrances or claims arising by or through Contractor or any party related to Contractor;
- d) Contractor will perform all of its obligations in accordance with **Article 7**, Contractor Performance;
- e) the Equipment is new, unless otherwise agreed in writing;
- f) shall be materially free from defects in materials; and,
- g) shall function properly.

ii. Equipment

Specific and any material warranties that exceed the equipment One-Year Warranty period shall be provided directly by the Equipment or material manufacturers and Contractor shall assign such warranties to the Political Subdivision, after the One-Year Warranty period.

iii. Obligations

During the One-Year Warranty period, Contractor shall remedy any defects due to faulty materials and shall pay for, repair and replace any resulting damage to other work or any other resulting damage directly associated with the Work. Only new and not reconditioned parts may be used as a remedy. The Personal Representative shall give written notice to Contractor of observed defects or other Work requiring correction with reasonable promptness.

Contractor shall pursue rights and remedies against any Equipment manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, defects in parts, workmanship and performance during the One-Year Warranty period. Contractor shall, during the One-Year Warranty period, notify the Principal Representative whenever defects in Equipment parts or performance arise that may provide a warranty claim. During the One-Year Warranty period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property, equipment of the Political Subdivision or the Premises, or Equipment, due to Contractor's failure to exercise its warranty rights shall be borne solely by Contractor.

Notwithstanding the above, nothing in this section shall be construed to abrogate Contractor's duty to perform its other obligations under this Contract.

22. POLITICAL SUBDIVISION M&V TERM RESPONSIBILITIES

The Political Subdivision is responsible during the M&V Term for:

- a) Hours of operation of the Premises or for any equipment or systems operating at the Premises; or
- b) Notifying the Contractor about equipment performance issues as they are noticed; or
- c) Permanent changes in the comfort and service parameters set forth in **Schedule N** (Standards of Comfort); or
- d) Failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule S** (Political Subdivision's Maintenance Responsibilities); or
- e) Providing Contractor the right once a month, with prior notice, to inspect the Premises to determine if the Political Subdivision is complying with appropriate schedules. For the purpose of determining such compliance, the checklist to be set forth at **Schedule S** (Political Subdivision's Maintenance Responsibilities), as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record the compliance of the Political Subdivision. The Political Subdivision shall make the Premises available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor's recordation on the checklist. The Principal Representative, on behalf of the Political Subdivision, may complete checklist for the Political Subdivision at the same time. Contractor shall not interfere with any operations of the Political Subdivision during any monthly inspection.

23. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Except for Contractor's Intellectual Property, any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the nonexclusive property of the Political Subdivision and, all Work Product shall be delivered to the Principal Representative by Contractor upon completion or termination hereof. The nonexclusive rights of the Political Subdivision in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Principal Representative on behalf of the Political Subdivision.

24. GENERAL PROVISIONS

A. Assignments

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract, except in the event that any third party acquires substantially all of the assets and obligations of Contractor, at which point the State may choose, in its sole discretion, to either provide consent to the assignment or terminate this contract without further obligation to the contractor.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the Governing Body of the Political Subdivision. Contractor shall submit to the Principal Representative a copy of each such subcontract upon request by the Principal Representative. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal, state and local laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **Article 24(A)**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors, and assigns.

D. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

F. Modification

Except as specifically provided in this Contract, any modifications to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable law and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies of the Political Subdivision. This Contract is subject to such modifications as may be required by changes in federal, State or local law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

G. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Contract to a statute, regulation, Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

H. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

I. Taxes

The Political Subdivision is exempt from all federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under **§§39-26-704(1), et seq., C.R.S.** The Political Subdivision shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State of Colorado imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

J. Conflict of Interest

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the Political Subdivision's interests. Absent the Principal Representative's prior written approval, after authorization from the Governing Body, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Political Subdivision hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Political Subdivision a disclosure statement setting forth the relevant details for the consideration of the Governing Body. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the apparent conflict constitutes a breach of this Contract.

K. Reporting – Notification

Reports, Evaluations, and reviews required under this **Article 24(K)** shall be in accordance with the procedures of and in such form as prescribed by the Principal Representative and in accordance with **Schedule A**, if applicable.

i. Performance, Progress, Personnel, and Funds

Principal Representative shall submit a report to the Contractor upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Schedule A**.

ii. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the Principal Representative of such action and deliver copies of such pleadings to the Principal Representative.

iii. Noncompliance

Contractor's failure to provide reports and notify the Principal Representative in a timely manner in accordance with this **Article 24(K)** may result in the delay of payment of funds and/or termination as provided under this Contract.

iv. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the Principal Representative in accordance with **Schedule A**. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal, state and local laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

L. Contractor Records

i. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the Principal Representative of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

ii. Inspection

Contractor shall permit the Principal Representative, any other authorized agent of the Political Subdivision, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The Political Subdivision reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the Political Subdivision may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the Political Subdivision may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

iii. Monitoring

Contractor shall permit the Political Subdivision, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the Political Subdivision shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

iv. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the Principal Representative, for the records of the Political Subdivision, or other designee of the Political Subdivision at the address

specified herein.

M. Confidential Information – Political Subdivision Records

Contractor shall comply with the provisions on this **Article 24(M)** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any Political Subdivision records, personnel records, and information concerning individuals.

i. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Political Subdivision Records are publicly available. Contractor shall not, without prior written approval of the Principal Representative, on behalf of the Political Subdivision, use, publish, copy, disclose to any third party, or permit the use by any third party of any Political Subdivision Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the Principal Representative, after authorization by Governing Body of the Political Subdivision. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

ii. Other Entity Access and Nondisclosure Agreements

Contractor may provide Political Subdivision Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to Political Subdivision Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any Political Subdivision Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the Principal Representative upon execution of the nondisclosure provisions if requested by the Principal Representative on behalf of the Political Subdivision.

iii. Use, Security, and Retention

Contractor shall use, hold and maintain Political Subdivision Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Political Subdivision Confidential Information. Contractor shall provide the Principal Representative with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of Political Subdivision Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return Political Subdivision Records provided to Contractor or destroy such Political Subdivision Records and certify to the Political Subdivision that it has done so, as directed by the Principal Representative. If Contractor is prevented by law or regulation from returning or destroying Political Subdivision Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such Political Subdivision Confidential Information.

iv. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Principal Representative regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Principal Representative. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Principal Representative, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Principal Representative at no additional cost to the Political Subdivision. The Principal Representative may

adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the Principal Representative. If Contractor cannot produce its analysis and plan within the allotted time, the Governing Body of the Political Subdivision, in its sole discretion, may perform such analysis and produce a remediation plan, or cause such analysis to be done and such remediation plan to be produced, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

v. Data Protection and Handling

Contractor shall ensure that all Political Subdivision Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract at all times.

vi. Compliance

Contractor shall review, on a semi-annual basis, all Colorado Office of Information Security (OIS) policies and procedures which OIS has promulgated pursuant to §§ 24-37.5-401, C.R.S., through 406 and 8 CCR § 1501-5, to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee. Contractor shall perform an annual SSAE16 SOC2 Type II audit including the following Trust Principles: Security, Confidentiality, and Availability, and shall provide the resulting audit report as directed by the Principal Representative.

vii. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the Principal Representative, including, without limitation, Political Subdivision non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

N. Order of Precedence

In the event of conflict or inconsistency between this Contract and its Schedules, Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. General Conditions of the **EPC Schedule A**
- ii. The provisions of the main body of this Contract
- iii. The remainder of **Schedule A**
- iv. Construction Documents **Article 6(A)**
- v. The remaining Schedules
- vi. Any other attachment

25. SCHEDULES-LIST OF

The following Schedules are attached hereto and incorporated by reference herein:

Schedule A	General Conditions of Energy Performance Contract
Schedule B	Energy Performance Contract Description of Work
Schedule C	Guarantee
Schedule D	Measurement and Verification Services Plan
Schedule E	Code Compliance Requirements
Schedule F	Schedule of Values (Initial)
Schedule G	Projected Financial Cost and Cash Flow Analysis
Schedule H	Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term
Schedule I	Record of Reviews (as recommended by the Colorado Energy Office)
Schedule J	Certification and Affidavit Regarding Unauthorized Immigrants (UI-1)
Schedule K	Certificate of Insurance (Including Professional Errors And Omissions Liability Insurance)
Schedule L	Performance Bond (SC-6.22)
Schedule M	Labor and Material Payment Bond (SC-6.221)
Schedule N	Standards of Comfort
Schedule O	Client Construction Specifications

Schedule P	Contractors Intellectual Property
Schedule Q	System Start-up and Commissioning
Schedule R	Contractor Training Responsibilities
Schedule S	Political Subdivision's Maintenance Responsibilities
Schedule T	Notice of Substantial Completion
Schedule U	Notice of Final Acceptance

26. OPTIONAL PROVISIONS AND ELECTIONS

The provisions of this Article alter the preceding Articles or enlarge upon them as indicated (The Energy Performance Contract General Conditions. The Principal Representative shall mark boxes and initial where applicable.

A. MODIFICATION OF ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

If the box below is marked, the six month warranty inspection is not required.

☐ _____ Principal Representative initial

B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES

If the box is marked, the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

☐ _____ Principal Representative initial

C. MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

If the box is marked and initialed by the Principal Representative as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same wherever they appear in the contract shall be similarly deleted.

The box may be marked only for projects with an estimated value of [less than \$500,000].

☐ _____ Principal Representative initial

D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time Of Completion And Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the party's right to damages only to the extent noted.

1. For the inability to use the Project, for each day after the number of calendar days specified in the Contractor's bid for the Project and the Contract for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to Zero Dollars (\$0.00) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.
2. For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor's bid for the Project and the Agreement to finally complete the Project as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to Zero Dollars (\$0.00) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the

Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

27. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. Political Subdivision Designee:

<i>Mr. Scott Turnipseed</i>
<i>Mayor</i>
<i>200 Broadway P.O. Box 609</i>
<i>Eagle, CO 81631</i>
<i>scott.turnipseed@townofeagle.org</i>

B. Contractor:

<i>Mr. Colby Geer</i>
<i>President</i>
<i>7601 Jefferson St NE Suite 100</i>
<i>Albuquerque, NM 87109</i>
<i>Colby.Geer@yearoutenergy.com</i>

28. SIGNATURE PAGE

Contract Routing Number Yearout ESPC

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Political Subdivision is relying on their representations to that effect.**

CONTRACTOR Yearout Energy Services Company, LLC By: Mr. Colby Geer Title: President – Yearout Energy Services Company, LLC _____ *Signature Date: _____	POLITICAL SUBDIVISION Town of Eagle, CO Town of Eagle, CO Town Council _____ By: Mr Scott Turnipseed, Mayor, Town of Eagle Date: _____
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SCHEDULE A
GENERAL CONDITIONS OF THE ENERGY PERFORMANCE CONTRACT

ARTICLE 1. DEFINITIONS

- A. CONTRACT DOCUMENTS
- B. DEFINITIONS OF WORDS AND TERMS USED
- C. ENERGY PERFORMANCE CONTRACT DEFINITIONS AND TERMS USED

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

- A. EXECUTION
- B. CORRELATION
- C. INTENT OF DOCUMENTS
- D. PARTNERING, COMMUNICATIONS AND COOPERATION

ARTICLE 3. COPIES FURNISHED

ARTICLE 4. OWNERSHIP OF DRAWINGS

ARTICLE 5. CONTRACTOR'S ARCHITECT/ENGINEER'S STATUS

ARTICLE 6. STATE DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

- A. DECISIONS
- B. JUDGMENTS
- C. ACCESS TO WORK
- D. INSPECTION

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

ARTICLE 8. MATERIALS AND EMPLOYEES

ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

- A. SURVEYS
- B. PERMITS AND LICENSES
- C. TAXES
- D. LAWS AND REGULATIONS

ARTICLE 10. PROTECTION OF WORK AND PROPERTY

- A. GENERAL PROVISIONS
- B. SAFETY PRECAUTIONS
- C. EMERGENCIES

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK documents available during construction

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

- A. DETAIL DRAWINGS AND INSTRUCTIONS
- B. SCHEDULES

ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. SUBMITTAL PROCESS
- B. FABRICATION AND ORDERING
- C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS
- D. CONTRACTOR REPRESENTATIONS

ARTICLE 14. SAMPLES AND TESTING

- A. SAMPLES
- B. TESTING – GENERAL (Intentionally Deleted)
- C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)
- D. TESTING – Construction phase Measurement and Verification

ARTICLE 15. SUBCONTRACTS

- A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO**
- B. SUBCONTRACTOR PREQUALIFICATION**
- C. SUBCONTRACTOR PROPOSALS**
- D. SUBCONTRACTOR FORMS**
- E. SUBCONTRACTOR SUBSTITUTION**
- F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS**

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

ARTICLE 18. SEPARATE CONTRACTS

ARTICLE 19. USE OF PREMISES

ARTICLE 20. CUTTING, FITTING OR PATCHING

ARTICLE 21. UTILITIES

- A. TEMPORARY UTILITIES**
- B. PROTECTION OF EXISTING UTILITIES**
- C. CROSSING OF UTILITIES**

ARTICLE 22. UNSUITABLE CONDITIONS

ARTICLE 23. TEMPORARY FACILITIES

- A. OFFICE FACILITIES**
- B. TEMPORARY HEAT**
- C. WEATHER PROTECTION**
- D. DUST PARTITIONS**
- E. BENCHMARKS**
- F. SIGN**
- G. SANITARY PROVISION**

ARTICLE 24. CLEANING UP

ARTICLE 25. INSURANCE

- A. GENERAL**
- B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**
- C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability rising out of any auto (including owned, hired and non-owned autos).**
- D. WORKERS' COMPENSATION INSURANCE**
- E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):**
- F. BUILDER'S RISK INSURANCE**
- H. POLLUTION LIABILITY INSURANCE**
- I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS**

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

ARTICLE 27. LABOR AND WAGES

ARTICLE 28. ROYALTIES AND PATENTS

ARTICLE 29. ASSIGNMENT

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

ARTICLE 31. APPLICATIONS FOR PAYMENTS

- A. CONTRACTOR'S SUBMITTALS**
- B. Intentionally deleted.**
- C. RETAINAGE WITHHELD**
- D. RELEASE OF RETAINAGE**

ARTICLE 32. CERTIFICATES FOR PAYMENTS

ARTICLE 33. PAYMENTS WITHHELD

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK (

ARTICLE 35. CHANGES IN THE WORK

CHANGES TO THE EPC FIXED LIMIT OF CONSTRUCTION COST

- A. THE VALUE OF CHANGED WORK**
- B. DETAILED BREAKDOWN**
- C. HAZARDOUS MATERIALS (add language from D/B GC)**

D.	<u>EMERGENCY FIELD CHANGE ORDERED WORK</u>
E.	<u>APPROPRIATION LIMITATIONS - §24-91-103.6, C.R.S., as amended</u>
<u>ARTICLE 36. CLAIMS</u>	
<u>ARTICLE 37. DIFFERING SITE CONDITIONS (Intentionally Deleted)</u>	
A.	<u>NOTICE IN WRITING (Intentionally Deleted)</u>
B.	<u>LIMITATIONS (Intentionally Deleted)</u>
<u>ARTICLE 38. DELAYS AND EXTENSIONS OF TIME</u>	
<u>ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS</u>	
<u>ARTICLE 40. RIGHT OF OCCUPANCY</u>	
<u>ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT</u>	
A.	<u>NOTICE OF COMPLETION</u>
B.	<u>FINAL INSPECTION</u>
C.	<u>NOTICE OF SUBSTANTIAL COMPLETION (Per Energy Conservation Measure and Project)</u>
D.	<u>NOTICE OF FINAL ACCEPTANCE (Per Energy Conservation Measure and Project)</u>
F.	<u>SETTLEMENT</u>
<u>ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE</u>	
<u>ARTICLE 43. LIENS</u>	
<u>ARTICLE 44. ONE-YEAR WARRANTIES</u>	
A.	<u>ONE YEAR WARRANTY OF THE WORK</u>
B.	<u>SPECIAL WARRANTIES</u>
<u>ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION</u>	
<u>ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES</u>	
<u>ARTICLE 47. DAMAGES</u>	
<u>ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES</u>	
A.	<u>STATE'S RIGHT TO DO THE WORK</u>
B.	<u>TEMPORARY SUSPENSION OF WORK</u>
C.	<u>DELAY DAMAGES</u>
<u>ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT</u>	
A.	<u>GENERAL</u>
B.	<u>CONDITIONS AND PROCEDURES</u>
C.	<u>ADDITIONAL CONDITIONS (Intentionally Deleted)</u>
<u>ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE</u>	
A.	<u>NOTICE OF TERMINATION</u>
B.	<u>PROCEDURES</u>
<u>ARTICLE 52. COLORADO SPECIAL PROVISIONS</u>	
<u>ARTICLE 53. MISCELLANEOUS PROVISIONS</u>	

ARTICLE 1. DEFINITIONS

A. CONTRACT DOCUMENTS

The Contract Documents consist of the following, some of which are procedural documents used in the administration and performance of the Agreement:

1. The Energy Performance Contract between the State and Contractor and all its Schedules, and Attachments;
 - 1.1 Contractor's Investment Grade Audit and Energy Performance Contract Project Proposal Contract, All Exhibits, Addenda, and Clarifications
 - 1.2 Accepted Investment Grade Audit Report and Energy Performance Contract Project Proposal
2. Performance Bond and Labor and Material Payment Bond ;
3. These General Conditions of the Energy Performance Contract (**EPC-GC**) and if applicable, Supplementary General Conditions;
4. Drawings developed by Contractor and accepted by State, prior to the Notice to Proceed to Commence Construction Phase;

5. Change Orders and any Amendments executed pursuant to State law and regulations;
6. Builder's risk insurance certificates of insurance;
7. Liability, workers' compensation and professional liability errors and omissions certificates of insurance;
8. Notice to Proceed to Commence Design Phase;
9. Notice to Proceed to Commence Construction Phase;
10. Notice of Approval of Occupancy/Use
11. Notice of Partial Substantial Completion);
12. Notice of Substantial Completion;
13. Notice of Partial Final Acceptance;
14. Notice of Final Acceptance);
15. Notice of Contractor's Settlement;
16. Application and Certificate for Contractor's Payment; and
17. Other procedural and reporting documents or forms referred to in these General Conditions of the Energy Performance Contract, the Specifications or required by the State Buildings Programs or the Principal Representative, including but not necessarily limited to the Pre-Acceptance Checklist form (SBP-05) and the Building Inspection Report (SBP-BIR). A list of the current standard Colorado Energy Office and State Buildings Programs forms applicable to this Contract may be obtained from the Principal Representative on request.

B. DEFINITIONS OF WORDS AND TERMS USED

1. **AGREEMENT.** The term "Agreement" shall mean the written agreement entered into by the State of Colorado acting by and through the Principal Representative and the Contractor for the performance of the Work and payment therefore, on the Energy Performance Contract (EPC-1). The term Agreement, when used without reference to EPC-1, may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement
2. **CHANGE ORDER.** When the Maximum Contracted Amount was increased, per EPC §7(B), the term "Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35A, The Value of Changed Work.
3. **COLORADO LABOR.** The term "Colorado labor", as provided in C.R.S. § 8-17-101(2)(a), as amended, means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the State of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days.
4. **CONSULTANT.** The term "Consultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design professionals and consultants are directly contracted to the Contractor.
5. **DAYS.** The term "days" whether singular or plural, shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used, it shall mean business days of the State of Colorado."
6. **DRAWINGS.** The term "Drawings" shall mean all drawings approved by appropriate State officials which have been prepared by the Contractor's Architect/Engineer showing the Work to be done, except that where a list of drawings is specifically enumerated in the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.
7. **EMERGENCY FIELD CHANGE ORDER.** The term "Emergency Field Change Order" shall mean a written change order for extra Work or a change in the Work necessitated by an emergency as defined in Article 35C, executed on Exhibit XIII and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.

8. **ENERGY SERVICE COMPANY'S ARCHITECT/ENGINEER.** The term "Energy Service Company Architect/Engineer" shall mean professionals licensed or registered by the State of Colorado who have contracted with the Energy Service Company with prior approval by the State, or a professional employee of the Energy Service Company, to accomplish the architectural and engineering services necessary for the Work. Nothing in this contract is intended to create a contractual relationship between such professional and the State of Colorado.
9. **ENERGY PERFORMANCE CONTRACT CHANGE ORDER.** The EPC Change Order is applicable only to Energy Performance Contracts and only for the original EPC MCP. The term "EPC Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35E, Changes in the EPC Fixed Limit of Construction Cost.
10. **FINAL ACCEPTANCE.** The terms "final acceptance" or "finally complete" mean the stage in the progress of the Project, after substantial completion, when all items of Work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Final Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a Partial Notice of Substantial Completion can be issued.
11. **NOTICE.** The term "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 27 (Energy Performance Contract), Notice Identification, or to such other person as either party identifies in writing to receive Notice or in the absence of the identified party, a principal of the Contractor. Notice by facsimile transmission where proper transmission is evidenced shall be adequate where facsimile numbers are included in Article 27 (Energy Performance Contract). Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.
12. **OCCUPANCY.** The term "Occupancy" means occupancy taken by the State as owner after the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Occupancy/Use. Prior to the date of execution of a Notice of Approval of Occupancy/Use, the State shall have no right to occupy and the project may not be considered safe for occupancy/use for the intended use.
13. **OWNER.** The term "Owner" shall mean the Principal Representative.
14. **PRINCIPAL REPRESENTATIVE.** The term "Principal Representative" shall be defined, as provided in §24-30-1301(14), C.R.S., and as may be amended, as the governing board of a state department, institution, or agency; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the General Assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in §24-30-1301(14), C.R.S. as amended. The Principal Representative may delegate authority. Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the project and shall be provided with a response in writing when requested.
15. **PRODUCT DATA.** The term "Product Data" shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.
16. **REASONABLY INFERABLE:** The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which Contractor could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes

into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications.

17. SAMPLES. The term "Samples" shall mean examples of materials or Work provided to establish the standard by which the Work will be judged.
18. SBP. The term "SBP" means "State Buildings Program," which is used in connection with labeling applicable State form documents (e.g., "SBP-01" is the form number for Notice of Approval of Occupancy/Use).
19. SC. The term "SC" means "State Contract" which is used in connection with labeling applicable State form documents (e.g., "SC 6.22" is the State form number for Performance Bond).
20. SCHEDULE OF VALUES. The term "Schedule of Values" is defined as the itemized listing of description of the Work. The format shall be the same as Schedule F (similar to the OSA form SC-7.2). Included shall be all costs of the Project, which shall be executed in final form by Contractor and delivered to the State, subject to acceptance by the State, after the Effective Date, and shall include design, material, labor and other costs, and the sum of all, as described in this Contract.
21. SHOP DRAWINGS. The term "Shop Drawings" shall mean any and all detailed drawings prepared and submitted by Contractor, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.
22. SPECIFICATIONS. The term "Specifications" shall mean the written requirements for the Work to be accomplished.
23. STATE BUILDINGS PROGRAMS. Shall refer to the Office of the State Architect within the Department of Personnel & Administration of Colorado State Government responsible for project administration, review, approval and coordination of plans, construction procurement policy, contractual procedures, and code compliance and inspection of all buildings, public works and improvements erected for state purposes; except public roads and highways and projects under the supervision of the division of wildlife and the division of parks and outdoor recreation as provided in § 24-30-1301, et seq, C.R.S. The term State Buildings Programs shall also mean that individual within a State Department agency or institution, including institutions of higher education, who has signed an agreement accepting delegation to perform all or part of the responsibilities and functions of State Buildings Programs.
24. SUBCONSULTANT. The term "Subconsultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design and other professionals directly contracted to the Contractor are considered subconsultants.
25. SUBCONTRACTOR. The term "Subcontractor" shall mean a person, firm or corporation supplying labor, materials, equipment and/or Services for Work at the site of the Project for, and under separate contract or agreement with the Contractor.
26. SUBMITTALS. The term "submittals" means drawings, lists, tables, documents and samples prepared by Contractor to facilitate the progress of the Work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of Subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.
27. SUBSTANTIAL COMPLETION. The terms "substantial completion" or "substantially complete" mean the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, as modified by any EPC Change Orders, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued.
28. SURETY. The term "Surety" shall mean any company providing labor and material payment and performance bonds for Contractor as obligor.

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

A. EXECUTION

Contractor, within ten (10) days from the Effective Date, as a requirement to execute the Energy Performance Contract, shall be required to furnish:

1. A fully executed Performance and Labor and Material Payment Bonds, on State Forms SC-6.22 and SC-6.221; and
2. A Certificate(s) of Insurance evidencing all required insurance on standard Acord forms designed for such purpose; and
3. A Professional Liability Errors and Omissions Insurance, if warranted by the Work.

B. CORRELATION

Upon execution of the Energy Performance Contract, the Contractor represents that Contractor has visited the Premises, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the State Buildings Program as implemented by the Principal Representative, and has correlated personal observations with the requirements of the Contract Documents.

C. INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or Work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply, so long as such more stringent or higher quality requirements are reasonably inferable. The Principal Representative shall decide with the Contractor a mutually agreeable resolution which requirements will provide the best installation. With the exception noted in the following paragraph, the precedence of the Contract Documents is as in the EPC Article 24, General Provisions:

Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the forms required by name or context and the form required by number, the form required by name or context shall control. The Contractor may obtain State and Colorado Energy Office forms from the Principal Representative upon request.

Nothing contained in the Energy Performance Contract Documents shall create a professional obligation or contractual relationship between the Principal Representative and any third party, including the Contractor's Architect/Engineer.

D. PARTNERING, COMMUNICATIONS AND COOPERATION

In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of energy performance contracts, the Contractor and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Contract may be better achieved and issues resolved in a more fully informed atmosphere.

Contractor and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of the issuance of the Notice to

Proceed to Commence Design Phase, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the Contract amount, and no costs associated with such plan or its development shall be recoverable under any Contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low Contract values may not justify the expense or special efforts required. In the case of small projects with an initial Fixed Limit of Construction Cost under \$500,000, the requirements of the preceding paragraph shall not apply.

ARTICLE 3. COPIES FURNISHED

The ESCO shall furnish to State the number of copies of Design Documents as specified in the Contract Documents (Article 5 (C) of the Energy Performance Contract), or if no number is specified, all copies reasonably necessary for the execution of the Work.

ARTICLE 4. OWNERSHIP OF DRAWINGS

Refer to Article 12 of the Energy Performance Contract.

ARTICLE 5. CONTRACTOR'S ARCHITECT/ENGINEER'S STATUS

In case of termination of employment or the death of the Contractor's Architect/Engineer, or the termination of the contract between the Contractor and the project's professional Architectural/Engineering firm, the Contractor will appoint a capable Architect/Engineer or contract with another professional firm, against whom the State makes no reasonable objection, whose status under the Contract shall be the same as that of the former Contractor's Architect/Engineer.

ARTICLE 6. DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

A. DECISIONS

The Contractor shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

Such decisions by the Contractor shall be promptly forwarded to the Principal Representative. The Principal Representative may consent with such decision by the Contractor or amend/revise such decision at the discretion of the Principal Representative.

B. JUDGMENTS

The State is the judge of the performance required by the Contract Documents as it relates to compliance with the Work and quality of workmanship and materials.

C. ACCESS TO WORK

The Principal Representative and representatives of State Buildings Programs shall at all times have access to the Work. Contractor shall provide proper facilities for such access and for their observations or inspection of the Work.

D. INSPECTION

The Contractor has agreed to allow the Principal Representative or consultants to the Principal Representative to make periodic visits to the Premises to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

If the Contract, the laws, or ordinances of any public authority require any Work to be specifically tested or approved, Contractor shall give the Principal Representative and appropriate testing agency (if necessary) timely notice of its readiness for observation by the State or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by Contractor. Contractor shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of Contractor to determine the Notice required by the State pursuant to the Building Inspection Record, according to State Building Inspection Form (SBP-B.I.R.), or the equivalent form required by the Principal Representative as approved by the State Buildings Program. If any such Work is covered up without approval or consent of the State or prior to any building code inspection, it must, if required by the State, the Principal Representative or the State Buildings Programs be uncovered for examination, at Contractor's expense. If such Work is found to be not in accordance with the Contract Documents, Contractor shall pay such costs, unless he or she shall show that the defect in the Work was caused by another contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned Work may be ordered, and if so ordered, the Work must be uncovered by Contractor. If such Work be found in accordance with the Contract Documents, Contractor shall be reimbursed the cost of examination and replacement.

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

The Contractor shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Principal Representative. The superintendent shall not be changed except with the consent of the Principal Representative, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to the superintendent shall be as binding as if given to the Contractor. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Contractor.

The Contractor shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Principal Representative.

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

ARTICLE 8. MATERIALS AND EMPLOYEES

Unless otherwise stipulated, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials and Equipment shall be new and both workmanship and materials shall be of uniform quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

Contractor is fully responsible for all acts and omissions of Contractor's employees and shall at all times enforce strict discipline and good order among employees on the Premises. Contractor shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the Work assigned to him.

ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

A. SURVEYS

The Principal Representative shall furnish all surveys, property lines and benchmarks deemed necessary by the Contractor, unless otherwise specified.

B. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by Contractor. Unless otherwise required, no local municipal or county building permit shall be required. However, State Buildings Programs requires each Principal Representative to administer a building code inspection program, the implementation of which may vary at each agency or institution of the State. The Contractor's employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements. State electrical and plumbing permits are required, unless the requirement to obtain such permits is altered by State Building's Programs. Contractor shall obtain and pay for such permits.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

C. TAXES

1. REFUND OF SALES AND USE TAXES

Contractor shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed to Commence Design or directed in the Specifications, Contractor shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by Contractor, and Contractor shall furnish such data as may be necessary to enable the State of Colorado, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, Contractor shall require Subcontractors to pay all local sales and use taxes required to be paid and to maintain records and furnish Contractor with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Colorado Department of Revenue shall issue to a Contractor or to a Subcontractor at any tier, a certificate or certificates of exemption per §39-26-114(1)(d), C.R.S., and §39-26-203, C.R.S.

2. FEDERAL TAXES

Contractor shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish Contractor, on request, exemption certificates.

D. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified.

Contractor shall bear all costs arising from the performance of Work required by the Drawings or Specifications that Contractor knows to be contrary to such laws, ordinances, rules or regulations.

ARTICLE 10. PROTECTION OF WORK AND PROPERTY

A. GENERAL PROVISIONS

Contractor shall continuously maintain adequate protection of all Work, materials, and protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. Contractor shall be responsible for any damage, injury or loss, except to the extent:

1. Caused by agents or employees of the Principal Representative; and,

2. Due to causes beyond Contractor's control and not to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by Contractor.

B. SAFETY PRECAUTIONS

Contractor shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, 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. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Principal Representative by Contractor.

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

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

C. EMERGENCIES

In an emergency affecting the safety of life or of the Work or of adjoining property, Contractor without special instruction or authorization from the Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided Contractor has no responsibilities for the emergency, if Contractor incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency Work, the Fixed Limit of Construction Cost shall be equitably adjusted in accordance with Article 35, Changes in the Work.

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK

When applicable, as determined at the sole discretion of the Principal Representative, Contractor shall keep on the Premises a printed or electronic copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. All such documents shall be available to representatives of the State. In addition, Contractor shall keep on the Premises a printed or electronic copy of all approved addenda, Change Orders, EPC Change Orders, and requests for information issued for the Work.

Contractor shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Product Data submittal log, and a Sample submittal log to record the status of all necessary and required submittals.

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

A. DETAIL DRAWINGS AND INSTRUCTIONS

The Contractor shall furnish additional instructions with reasonable promptness, by means of drawings or otherwise, necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable there from.

The Work shall be executed in conformity with such instructions and Contractor shall do no Work without proper Drawings, Specifications or instructions.

The Contractor and the Principal Representative shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the Work, fixing the dates at which the various detail drawings and specification that will be required. A schedule shall be prepared, fixing the dates for the beginning of manufacture and installation of materials and for the completion of the various parts of the Work.

B. SCHEDULES

1. DESIGN SCHEDULE

Prior to receiving the Notice to Proceed to Commence Design Phase (SC-8.26), the Contractor shall submit a detailed Design Phase Schedule identifying all phases of design, including time identified for the Principal Representative to review and approve design documents and specifications at each design milestone. The Design Phase Schedule shall also identify adequate time for the document coordination between the Contractor and each of its consultants.

2. SUBMITTAL SCHEDULES

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase a schedule shall be prepared by the Contractor fixing the dates for the beginning of manufacture, procure the equipment, and installation of materials for the completion of the various parts of the Work. The schedule shall be subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Principal Representative. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture, procure the equipment and/or installation.

At the time the schedule is prepared, Contractor and Principal Representative shall jointly identify the Product Data and Samples, if any, which the Principal Representative shall receive simultaneously with the Contractor for the purposes of Owner coordination with existing facility standards and systems. Transmittal of Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

3. SCHEDULE OF VALUES

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative, for approval, and to the State Buildings Programs when specifically requested, a complete itemized Schedule of Values (Schedule F) of the various parts of the Work, as estimated by Contractor, aggregating the total Project price. The Schedule of Values shall be in by ECM/FIM as indicated in the EPC Description of Work (Schedule B) or in such detail as the Principal Representative shall require, and be prepared on forms acceptable to the Principal Representative. Contractor shall revise and resubmit the Schedule of Values for approval when, in the opinion of the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents.

The total cost of each line item so separately identified shall be consistent with the CEO Cost and Pricing Tool.

The cost of subcontracts shall be incorporated in Schedule of Values, and when requested by the Principal Representative, shall be separately shown as line items.

This Schedule of Values (Schedule F), when approved by the Principal Representative, shall be used in preparing Contractor's applications for payment.

4. CONSTRUCTION SCHEDULES

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Contractor's schedule shall be a critical-path method (CPM) construction schedule. The construction schedule should start with the date of Notice to Proceed to Commence Construction for the first Work phase and include the various Work activities, change order work (when applicable), demonstration of equipment operation when called for in the Specifications, commissioning of installed equipment, post-installation verification activities, testing, closeout, and acceptance and any other steps as agreed to with the Principal Representative. The completion time shall be the time specified in the Contract.

Contractor shall submit monthly updates of the construction schedule. These updates shall reflect Contractor's "Work in place" progress.

When construction phase measurement and verification is required by the Measurement and Verification Plan, Schedule D, the Contractor shall prepare and submit to the Principal Representative a schedule for M&V activities in accordance with Article 14, Samples and Testing, Construction Phase Measurement and Verification.

ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. SUBMITTAL PROCESS

Contractor shall check and field-verify all dimensions. Contractor shall check, approve and submit to the Principal Representative in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the Specifications or required for the Work of the various trades. All Drawings and Product Data shall contain identifying nomenclature and each Submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.

The Principal Representative shall review and comment on the Specifications, Shop Drawings, and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Specifications, Shop Drawings, and Product Data, if any, shall be clearly noted, and the submittals shall be returned to Contractor for such corrections. On resubmitted Specifications, Shop Drawings, Product Data or Samples, Contractor shall direct specific attention in writing on the transmittal cover to revisions on any previously checked submittal. The Principal Representative shall promptly review and comment on, and return, the resubmitted items.

Contractor shall thereafter furnish such other copies in the form approved by the Principal Representative as may be needed for the prosecution of the Work.

B. FABRICATION AND ORDERING

As required by the Work, fabrication shall be started by Contractor only after receiving approved Shop Drawings by the Principal Representative. Materials shall be ordered in accordance with

approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.

C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS

The review and comments of the Specifications, Shop Drawings, Product Data or Samples by the Principal Representative shall not relieve Contractor from responsibility for deviations from the Drawings or Specifications, unless the Contractor has in writing called the attention of the Principal Representative to such deviations at the time of submission, nor shall it relieve Contractor from responsibility for errors of any sort in Drawings or Specifications. Review and comments on Specifications, Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Principal Representative in accordance with Articles 35 and 36.

D. CONTRACTOR REPRESENTATIONS

By preparing, approving, and/or submitting Specifications, Shop Drawings, Product Data and Samples, Contractor represents that Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

ARTICLE 14. SAMPLES AND TESTING

A. SAMPLES

Contractor shall furnish for approval, with such promptness as to cause no delay in his or her Work or in that of any other Contractor, applicable Samples as defined in the Schedule B.

B. TESTING – GENERAL (Intentionally Deleted)

C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)

D. TESTING – Construction Phase Measurement and Verification

Additional testing required during construction by the Measurement and Verification Plan, **Schedule D**, will be coordinated by the Contractor.

ARTICLE 15. SUBCONTRACTS

A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO

After the contract is awarded, the Contractor is required to provide written notice to the Principal Representative no later than twenty (20) days after deciding to perform services under this contract outside the United States or Colorado or to subcontract services under this contract to a subcontractor that will perform such services outside the United States or Colorado. The written notification must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or Colorado and the reason why it is necessary or advantageous to go outside the United States or Colorado to perform the services. All notices received by the State pursuant to outsourced services shall be posted on the Colorado Department of Personnel & Administration's website. *If the Contractor knowingly fails to notify the Principal Representative of any outsourced services as specified herein, the Principal Representative, at its discretion, may terminate this contract as provided in C.R.S. § 24-102-206 (4). (Does not apply to any project that receives federal moneys.)*

B. SUBCONTRACTOR PREQUALIFICATION

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Contractor shall submit to the Principal Representative a complete list of all proposed pre-qualified Subcontractors. The Contractor shall submit to the Principal Representative a complete list of Consultants including the Contractor's Architect/Engineer and the professional Subconsultants. It shall be as complete as possible at the time, showing all known Subcontractors, Consultants and Subconsultants planned for the Work. The list shall be

supplemented as other Subcontractors are determined by the Contractor and any such supplemental list shall be submitted to the Principal Representative not less than ten (10) days before the Subcontractor commences Work.

The Contractor's list of all proposed pre-qualified Subcontractors shall include those Subcontractors, if any, which the Contractor indicated in its Investment Grade Audit report, would be employed for specific portions of the Work or if such indication was requested in the Request for Proposal documents issued by the State.

C. SUBCONTRACTOR PROPOSALS

The Contractor shall request and receive proposals from the Subcontractors and subcontracts will be awarded after the proposals are tabulated in a pre-approved format which compares to each Fixed Limit of Construction Cost per Schedule B, as indicated in the finalized Schedule F, and, reviewed by, Contractor, and Principal Representative.

Should Contractor submit a proposal for subcontract Work, the proposal conditions used shall be the same as for all subcontractor proposals. These Contractor proposals for subcontract Work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and be opened with the other proposals.

D. SUBCONTRACTOR FORMS

All subcontracts will be between Contractor and the Subcontractors. The form of subcontracts shall be furnished to the Principal Representative for review and consent as to form, for which consent shall not be unreasonably withheld.

E. SUBCONTRACTOR SUBSTITUTION

The substitution of any Subcontractor listed in the Contractor's proposal shall be justified in writing not less than ten (10) days after the date of the Notice to Proceed with Design, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. Contractor shall bear any additional cost incurred by such substitutions.

F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS

The Contractor shall not employ any Subcontractor that the Principal Representative, within ten (10) days after the date of receipt of the Contractor's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to either the Principal Representative or State Buildings Program. If a Subcontractor is deemed unacceptable, the Contractor shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Contractor.

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS

Contractor agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents and Procedural Documents, as applicable to the Work of such Subcontractor. Contractor further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the State of Colorado acting by and through its Principal Representative.

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

Should the Contractor cause damage to any separate contractor engaged by the Principal Representative on the Work, the Contractor agrees, upon due Notice, to settle with such separate contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the Contractor, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Contractor shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 53(I), Indemnification, provided the Contractor was given due Notice of an opportunity to settle.

ARTICLE 18. SEPARATE CONTRACTS

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate his or her Work with theirs. If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other separate contractor, the Contractor shall inspect and promptly report to the Principal Representative any defects in such Work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other separate contractor's Work as fit and proper for the reception of work, except as to defects which may develop in the other separate contractor's Work after the execution of the Contractor's Work.

To insure the proper execution of subsequent Work, the Contractor shall measure Work already in place and shall at once report to the Principal Representative any discrepancy between the executed Work and the Drawings.

ARTICLE 19. USE OF PREMISES

Contractor shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings or defined in the Work. Contractor shall not unreasonably encumber the premises with materials. Contractor shall enforce all of the Principal Representative's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

ARTICLE 20. CUTTING, FITTING OR PATCHING

The Contractor shall do all cutting, fitting or patching of Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of other separate contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted Work as the Principal Representative may direct. The Contractor shall not endanger any Work by cutting, excavating or otherwise altering the Work and shall not cut or alter the Work of any other separate contractor save with the consent of the Principal Representative.

ARTICLE 21. UTILITIES

A. TEMPORARY UTILITIES

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the placement of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to Contractor's compliance with all statutory or regulatory requirements. When actual conditions deviate from those shown in the Drawings and Specifications, Contractor shall comply with the requirements of Article 37, Differing Premises Conditions. As applicable to the Project, Contractor shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him or her and other Contractors for their Work associated with the Project and shall install and maintain all such

utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site, if applicable. Contractor shall pay for all consumption of power, light and water used by him or her and the other Contractors used during the Project as it applies to these temporary utilities, without regard to whether such items are metered by temporary or permanent meters. The Superintendent shall have full authority over all trades and Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the Notice of Substantial Completion of the Project, whichever shall be the earlier date.

B. PROTECTION OF EXISTING UTILITIES

Where existing utilities, such as water mains, sanitary sewers, storm sewers, computer networks, and electrical conduits, are shown on the Drawings, Contractor shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.

C. CROSSING OF UTILITIES

When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, Contractor shall secure proper written permission before executing such new construction. Contractor will be required to furnish a proper release before final acceptance of the Work.

ARTICLE 22. UNSUITABLE CONDITIONS

Contractor shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any loss, damage, or increased cost caused by ill-timed Work shall be borne by Contractor unless the timing of such Work shall have been directed by the Principal Representative, and Contractor provided Notice of any additional cost.

ARTICLE 23. TEMPORARY FACILITIES

A. OFFICE FACILITIES

Contractor shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the representatives of the Principal Representative.

B. TEMPORARY HEAT

Contractor shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If Contractor desires to put the permanent system into use, in whole or in part, Contractor shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve Contractor of his or her Warranty of the Work from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, Contractor shall provide manufacturers' extended warranties from the date of Contractor's use prior to the date of the Notice of Substantial Completion.

C. WEATHER PROTECTION

The Contractor shall, at all times, provide protection against weather, so as to maintain all Work, materials, apparatus and fixtures free from injury or damages. The Contractor shall provide weathertight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.

D. DUST PARTITIONS

If the Work involves Work in an occupied existing building, Contractor shall erect and maintain during the progress of the Work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

E. BENCHMARKS

Contractor shall maintain any Premises benchmarks provided by the Principal Representative and shall establish any additional benchmarks specified by the Principal Representative as necessary for Contractor to layout the Work and ascertain all grades and levels as needed.

F. SIGN

Contractor shall erect and permit one 4' x 8' sign only at the Premises to identify the Project as specified or directed by the State which shall be maintained in good condition during the life of the Project.

G. SANITARY PROVISION

Contractor shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete Contractor shall promptly remove them from the Premises, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are permanently soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt.

ARTICLE 24. CLEANING UP

Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or Work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the Work clean unless more exact requirements are specified.

ARTICLE 25. INSURANCE

A. GENERAL

The Contractor shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Contractor shall continue to provide evidence of such coverage to State of Colorado on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days' prior Notice per Article 27 (Energy Performance Contract) by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence."

B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)

This insurance must protect the Contractor from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Contract, whether such operations be by the Contractor or by any Subcontractor under him or anyone directly or indirectly employed by the Contractor or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

Personal Injury

\$1,000,000

The following coverages shall be included in the CGL:

1. Per project general aggregate (CG 25 03 or similar)
2. Additional Insured status in favor of the State of Colorado and any other parties as outlined in The Contract and must include both ONGOING Operations AND COMPLETED Operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law
3. The policy shall be endorsed to be primary and non-contributory with any insurance maintained by Additional Insureds
4. A waiver of Subrogation in favor of all Additional Insured parties
5. Personal Injury Liability
6. Contractual Liability coverage to support indemnification obligation per Article 53.1
7. Explosion, collapse and underground (xcu)

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to Work performed by Subcontract/Vendor (CG 22-94 or similar)
2. Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar)
3. If applicable to the Work to be performed: Residential or multi-family
4. If applicable to the Work to be performed: Exterior insulation finish systems
5. If applicable to the Work to be performed: Subsidence or Earth Movement

The Contractor shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in this Contract for three (3) years after completion of the project.

C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).

Combined Bodily Injury and Property Damage Liability
(Combined Single Limit): \$1,000,000 each accident

Coverages:
Specific waiver of subrogation

D. WORKERS' COMPENSATION INSURANCE

The Contractor shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the State of Colorado.

The Contractor shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding \$10,000,000, provide the following coverage):

The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section B-D above. Coverage shall follow the terms of the underlying insurance, including the additional insured and waiver of subrogation provisions. The amounts of insurance required in Sections above may be satisfied by the Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	\$5,000,000
Aggregate	\$5,000,000

F. BUILDER'S RISK INSURANCE

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than \$1,000,000), the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the Notice of Acceptance, State Form SBP-6.27 or whichever is later.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00).

Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss.

Contractor shall maintain Builders Risk coverage including partial use by Owner.

The Contractor shall waive all rights of subrogation as regards the State of Colorado and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. For damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the

insurance represented by such independent contracts let or to be let to the total insurance carried.

The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

G. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE

The Contractor's Architect/Engineer or other such consultant providing professional services to the Contractor shall require to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Principal Representative and approved by the State Buildings Programs. The policy, including claims-made forms, shall remain in effect for the duration of this Agreement and for at least three (3) years beyond the completion and acceptance of the Work. The Contractor's Architect/Engineer shall be responsible for all claims, damages, losses or expenses including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Contractor's Architect/Engineer, any consultant or associate thereof, or anyone directly or indirectly employed by the Contractor. The Contractor shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of the said policy as they occur.

For a Fixed Limit of Construction Cost	Minimum Coverage per Claim	Minimum Coverage in the Aggregate
\$999,999 and under	\$250,000	\$500,000
\$1,000,000 to \$4,999,999	\$500,000	\$1,000,000
\$5,000,000 to \$19,999,999	\$1,000,000	\$2,000,000
\$20,000,000 and above	\$2,000,000	\$2,000,000

H. POLLUTION LIABILITY INSURANCE

If Contractor is providing directly or indirectly work with pollution/environmental hazards, the Contractor must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.

I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Contractor;
2. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to the Principal Representative and State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance

- requirements be construed to conflict with the obligations of the Contractor concerning indemnification;
3. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the Principal Representative;
 4. Receipt, review or acceptance by the Principal Representative of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Conditions.

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond on State Forms SC-6.22, Performance Bond, and SC-6.221, Labor and Material Payment Bond, or such other forms as State Buildings Programs may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Fixed Limit of Construction Cost. The expense of these bonds shall be borne by the Contractor and the bonds shall be filed with Principal Representative and State Buildings Programs.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents or the bid documents, or loses its right to do business in the State of Colorado, another Surety will be required, which Contractor shall furnish to the Principal Representative and State Buildings Programs within ten (10) days after receipt of Notice from the Principal Representative or after Contractor otherwise becomes aware of such conditions.

The bonds shall be maintained in full force and effect until Final Completion of the construction work but are not being furnished to cover any utility guarantee or guaranteed savings under this Contract. Upon Final Acceptance the bonds shall be released.

ARTICLE 27. LABOR AND WAGES

In accordance with laws of Colorado, **C.R.S. § 8-17-101(1)**, as amended, Colorado labor shall be employed to perform at least eighty percent (80%) of the work. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article 26 (Energy Performance Contract), Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

ARTICLE 28. ROYALTIES AND PATENTS

Contractor shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the Work. Contractor shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado and the Principal Representative harmless from loss on account thereof, in accordance with Article 53(l) Indemnification.

ARTICLE 29. ASSIGNMENT

Except as otherwise provided, hereafter the Contractor shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by **C.R.S. § 4-9-406**, et. seq., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative and the controller for the agency, department, or institution executing this Contract (as distinguished from the State Controller). Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Contractor assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called

for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the Principal Representative against the Contractor or the assignee.

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

Contractor shall promptly remove from the premises all Work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Principal Representative. If such materials shall have been incorporated in the Work, or if any unsatisfactory Work is discovered, the Contractor shall promptly replace and re-execute his or her Work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or Work.

Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or Work is in accordance with the Contract Documents, the value of such defective or questionable material or Work shall not be included in any application for payment, or if previously included, shall be deducted by the Principal Representative from the next application submitted by the Contractor.

If Contractor does not perform repair, correction and replacement of defective Work, in lieu of proceeding by issuance of a Notice of Intent to remove condemned Work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace defective Work, deduct all costs and expenses of replacement or correction as instructed by the State from Contractor's next application for payment in addition to the value of the defective Work or material. The Principal Representative may also make an equitable deduction from the Fixed Limit of Construction Cost by unilateral Change Order, in accordance with Article 33, Payments Withheld and Article 35, Changes in The Work.

If the Contractor does not remove such condemned or irreparably defective Work or material within a reasonable time, the Principal Representative may, after giving a second seven- (7) day advance Notice to the Contractor and the Surety, remove them and may store the material at the Contractor's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another separate contractor. If the Contractor does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Contractor. If the Contractor shall commence and diligently pursue such removal and replacement before the expiration of the seven-day period, or if the Contractor shall show good cause in conjunction with Schedule showing when the Work will be performed and why such removal of condemned Work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned Work.

If the Contractor disagrees with the Notice to remove Work or materials condemned or declared irreparably defective, the Contractor may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue

ARTICLE 31. APPLICATIONS FOR PAYMENTS

A. CONTRACTOR'S SUBMITTALS

On or before the first day of each month and no more than five days prior thereto, Contractor may submit applications for payment for the Work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. Contractor shall submit the application for payment to the Principal Representative on a format the State Buildings Programs shall approve (Schedule F) or the State forms SBP-7.2, Certificate for Contractor's Payment, in an itemized format in accordance with the Schedule of Values

(Schedule F), supported to the extent reasonably required by the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of Contractor's right to payments as the Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the Premises, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by Contractor of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative and shall be subject to the right to inspect the materials at the request of the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

B. Intentionally deleted.

C. RETAINAGE WITHHELD

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to five percent (5%) of the amount shown to be due the Contractor on each application for payment shall be withheld until the work required by the Contract has been performed. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.

D. RELEASE OF RETAINAGE

Contractor may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative for release of part or all of the withheld percentage applicable to the Work of a Subcontractor which has completed the subcontracted Work in a manner finally acceptable to Contractor and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's Contract with Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. The Principal Representative shall not be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.

Contractor's obligation under these General Conditions to warranty Work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

Contractor remains fully responsible for the Subcontractor's Work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers Contractor's request for such release satisfactory and supported by substantial reasons, the State may make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's Work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's Work, and the procedures of Article 41 shall be followed for that portion of the Work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

ARTICLE 32. CERTIFICATES FOR PAYMENTS

State Form SBP-7.2, Certificate For Contractor's Payment, as modified to include design and construction administration services and as approved by the Principal Representative and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor's Application for Payment, and shall be a representation by the Contractor to the Principal Representative that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative, the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.

ARTICLE 33. PAYMENTS WITHHELD

The Principal Representative may withhold, or on account of subsequently discovered evidence, nullify the whole or any part of any payment application on account of, but not limited to, any of the following:

1. Defective Work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of Contractor to make payments to Subcontractors for material or labor;
4. A reasonable doubt that the Contract can be completed for the balance of the Fixed Limit of Construction Cost then unpaid;
5. Damage or injury to another contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;
6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the State;
7. Failure to submit a monthly construction schedule;
8. Failure of Contractor to keep Work progressing in accordance with the construction schedule;
9. Failure to keep a superintendent on the Work;
10. Failure to maintain as built drawings of the Work in progress;
11. Unauthorized deviations by Contractor from the Contract Documents; or
12. On account of liquidated damages.

In addition, the Principal Representative or State Buildings Programs may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Energy Performance Contract. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Principal Representative estimates to be required to allow the Principal Representative to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys' fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK

If the Principal Representative deems it inexpedient to correct Work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after ten (10) days' Notice to Contractor of intent to do so, make reasonable reductions from the amounts otherwise due Contractor on the next application for payment. Notice shall specify the amount or terms of any contemplated reduction. Contractor may during this period elect to correct or perform the Work. If Contractor does not elect to

correct or perform the Work, an equitable deduction from the Fixed Limit of Construction Cost shall be made by Change Order, in accordance with Article 35, Changes In The Work. If either party elects facilitation of this issue after Notice is given, the 10-day notice period shall be extended and tolled until facilitation has occurred.

ARTICLE 35. CHANGES IN THE WORK

CHANGES TO THE EPC FIXED LIMIT OF CONSTRUCTION COST

Changes to the Fixed Limit of Construction Cost within the Maximum Contract Price of an Energy Performance Contract, that the costs are negotiation determined based upon the IGA Exhibit C, Cost and Pricing Elements instead of Article 35B limits. Articles 35 A, B, C, and D apply, but The Contractor will indicate and detail in any EPC Change Order if and how the Annual Guaranteed Cost Savings is modified. Changes to the Maximum Contract Price that are not based upon an additional EPC phase or a decrease in the EPC Description of Work (EPC Schedule B) are based upon the limits in Article 35B.

The Principal Representative may designate, without invalidating the Agreement, and with the approval of State Buildings Program and the State Controller, may order extra Work or make changes with or without the consent of the Contractor as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Contractor and adjusted by Change Order to the extent known at the time such change is ordered and before proceeding with the extra or changed Work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.

The Principal Representative or the Contractor's Architect/Engineer with the consent of the Principal Representative, shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the *intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Change Order, approved by the Principal Representative, State Buildings Program, and the State Controller prior to proceeding with the changed Work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Program as hereafter provided in Article 35C, Emergency Field Ordered Changed Work; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract Sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract Sum shall be valid unless so ordered.*

A. THE VALUE OF CHANGED WORK

1. *The value of any extra Work or changes in the Work shall be determined by agreement in one or more of the following ways:*
 - a. *By estimate and acceptance of a lump-sum amount;*
 - b. *By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;*
 - c. *By actual cost plus a fixed fee, in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed Work.*
2. *Where the Contractor and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Contractor to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Contractor's Architect/Engineer or Principal Representative. The value of the change in the Work shall be the Principal Representative's determination of the*

amount of equitable adjustment attributable to the extra Work or change. The Principal Representative's determination shall be subject to appeal by the Contractor pursuant to the claims process in Article 36, Claims.

3. Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-101, C.R.S., as amended, shall govern all Contract changes.

B. DETAILED BREAKDOWN

In all cases where the value of the extra or changed Work is not known, based on unit prices in the Contractor's proposal or the Agreement, a detailed change proposal shall be submitted by the Contractor on a Change Order Proposal (SC-6.312), or in such other format as the Principal Representative and State Buildings Program approve, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed Work.

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Principal Representative:

1. Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' Work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).
2. Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.
3. Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change.
4. Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.
5. Workers' compensation costs, if not included in labor burden.
6. The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Contractor as a result of the changed Work.
7. Overhead and profit, as hereafter specified.
8. Builder's risk insurance premium costs.
9. Bond premium costs.
10. Testing costs not otherwise excluded by these General Conditions.
11. Subcontract costs.
12. Contractor's Architect/Engineer Design Services Costs.

Unless modified in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.

	OVERHEAD	PROFIT	COMMISSION
To the Contractor or to Subcontractors for the portion of work performed with their own forces:	10%	5%	0%
To the Contractor or to Subcontractors for work performed by others at a tier immediately below either of them:	5%	0%	5%

Overhead shall include: a) insurance premium for policies not previously purchased (if required) for the Project and itemized above, b) home office costs for office management, administrative

and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "Work" as used in the preceding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted Work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for Work involving both additions and credits to the amount of the Contract Sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative and State Buildings Program approve. This requirement applies equally to Work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.

Except for proposals for Work involving both additions and credits, changed Work shall be adjusted and considered separately for Work either added or omitted. The amount of adjustment for Work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.

The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra Work; however, unless specifically required in the Contract Documents, the Contractor shall have no responsibility without additional compensation to supervise the Work of persons or firms separately contracted by the Principal Representative.

C. HAZARDOUS MATERIALS

The Principal Representative represents that it has undertaken an examination of the site of the Work and has determined that there are no hazardous substances, as defined below, which the Contractor could reasonably encounter in its performance of the Work. In the event the Principal Representative so discovers hazardous substances, the Principal Representative shall render harmless such hazards before the Contractor commences the Work.

In the event the Contractor encounters any materials reasonably believed to be hazardous substances which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Principal Representative, in writing. For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance," "hazardous waste," or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act. The Work in the affected area shall not, therefore, be resumed except by written agreement of the Principal Representative and the Contractor, if in fact materials that are hazardous substances have not

been rendered harmless. The Work in the affected area shall be resumed only in the absence of the hazardous substances or when it has been rendered harmless or by written agreement of the Principal Representative and the Contractor.

The Contractor shall not be required to perform Work without consent in any areas where it reasonably believes hazardous substances that have not been rendered harmless are present.

D. EMERGENCY FIELD CHANGE ORDERED WORK

The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Program and without the approval of the State Controller, may order extra Work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using an Emergency Field Change Order form (SC-6.31E).

If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a Not To Exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor will be entitled, including direct and indirect costs of changed Work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

On Emergency Field Change Orders where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Contractor shall report all costs to the Principal Representative. The final adjustment of the Emergency Field Change Order amount and the adjustment to the Project time for completion shall be prepared on a normal Change Order from (SC-6.31) in accordance with the procedures described in Article 35A, The Value of Changed Work, and B, Detailed Breakdown, above. Unless otherwise provided in writing signed by the Director of State Buildings Program to the Principal Representative and the Contractor, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than \$25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of \$100,000.

E. APPROPRIATION LIMITATIONS - § 24-91-103.6, C.R.S., as amended

The amount of money appropriated, as shown on the Design/Build Maximum Price Agreement (SC 9.0), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf, which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Design Build Guaranteed Maximum Price Agreement (SC-9.0), unless one of the following occurs: (1) the Contractor is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a Contractor remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for any order, directive or instruction by the Contractor's

Architect/Engineer or the Principal Representative to perform Work which is determined to be within the performance required by the Contract Documents; the Contractor's remedy shall be as described elsewhere in these General Conditions.

ARTICLE 36. CLAIMS

It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of issues relating to the Premises, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of this Article 36, Claims, Contractor shall 1) first, informally present the claim to Principal Representative as described hereafter, and 2) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal Contract controversy, and 3) seek resolution outside the Contract as provided by the Procurement Code.

If the Contractor claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Principal Representative affecting the scope of the Contractor's Work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Contractor shall have the right to assert a claim for such costs or time.

Unless it is the Principal Representative's judgment and determination that the Work is not included in the performance required by the Contract Documents, the Contractor shall proceed with the work as originally directed. Where the Contractor's claim involves a dispute concerning the value of Work unilaterally directed pursuant to Article 35A2 the Contractor shall also proceed with the Work as originally directed while his or her claim is being considered.

The Contractor shall give the Principal Representative Notice of any claim promptly but in no case later than ten (10) days from the date of the occurrence affecting the claim. The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes in The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Contractor with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Contractor and Principal Representative agree) after receipt of the Contractor's Notice of claim regarding such instructions or alleged act or omission. If no response to the Contractor's claim is received within seven (7) business days of Contractor's Notice (or at such other time as the Contractor and Principal Representative agree) and the instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Contractor's claim that is denied.

If the Contractor disagrees with the Principal Representative's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within

ten (10) days of receipt of the Principal Representative's decision denying the claim. A "contract controversy," as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Contractor. The Contractor's failure to proceed with Work directed by the Principal Representative or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Contractor and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Contractor may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Contractor in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Contractor of the reasons for any denial. Unless the claim has been decided by the Principal Representative (as opposed to delegates of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. In the event of a denial, the Principal Representative shall give Notice to the Contractor of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 *et seq*, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Contractor's giving Notice (or such other date as the Contractor and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission has not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Contractor's claim.

Either the Contractor or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Contractor shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.

Disagreement with the decision of the Principal Representative to deny any claim or denying the contract controversy shall not be grounds for the Contractor to refuse to perform the Work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Contractor shall proceed diligently with the Work directed.

In all cases where the Contractor proceeds with the Work and seeks equitable adjustment by filing a claim and or statutory appeal, the Contractor shall keep a correct account of the extra cost, in accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.

The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the Work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.

ARTICLE 37. DIFFERING SITE CONDITIONS

A. NOTICE IN WRITING

Contractor shall promptly, and where possible before conditions are disturbed, give the Principal Representative Notice in writing of:

1. subsurface or latent physical conditions at the Premises differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,
2. unknown physical conditions at the Premises, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.

The Principal Representative shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in Contractor's costs of performance of any part of the Work required by the Contract Documents, whether or not such Work is changed as a result of such conditions, an equitable adjustment shall be made and the Fixed Limit of Construction Cost shall be modified in accordance with Article 35, Changes In The Work.

If the time required for completion of the Work affected by such materially differing conditions will extend the Work the time for completion shall also be equitably adjusted.

B. LIMITATIONS

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the Notice required in Article 37A, Notice In Writing, above The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the Principal Representative to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Contractor for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Contractor requests a final inspection pursuant to Article 41A, Notice Of Completion.

ARTICLE 38. DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the State of Colorado, Principal Representative, or of any employee or agent of either, or by any separately employed Contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the Work as the Contractor shall be able to show he or she could not have avoided by the exercise of due diligence.

The Contractor shall provide Notice in writing to the Principal Representative within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.

All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Principal Representative as part of a claim for extra cost, if any, in accordance with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.

Except as otherwise provided in this paragraph, no extension of time shall be granted when the Contractor has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on Contractor's CPM schedule.

Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Contractor would have Worked but was unable to Work, with each separate extension figured to the nearest whole calendar day.

For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Contractor shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

Contractor and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them or any decision of the State. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non-requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; provided, however, that either party may request the director of State Buildings Programs to appoint such a person, who, if appointed, shall be accepted for this purpose by both Contractor and the Principal Representative.

The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.

Any dispute, claim, question or disagreement arising from or relating to the Contract or an alleged breach of the Contract may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.

The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:

1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;
2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available, including the State;

7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through (10) this Article 39 no more than three times during the course of the Project;
9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,
10. to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

In accordance with State Fiscal Rules and the Colorado Special Provisions, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.

A partnering plan developed as described in Article 2D, Partnering, Communications and Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under \$500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 26, Optional Provisions and Elections (Energy Performance Contract). When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

ARTICLE 40. RIGHT OF OCCUPANCY

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and Contractor shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work, but may impact equipment warranty start date.

Prior to any occupancy of the Project, an inspection shall be made by the Principal Representative, the Contractor's Architect/Engineer, and the Contractor. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended and the Notice of Substantial Completion has been issued for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The Contractor shall assist the Principal Representative in completing and executing State Form SBP-01, Approval of Occupancy/Use, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 41, Completion, Final Inspection, Acceptance and Settlement.

ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. NOTICE OF COMPLETION

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Contractor shall file a written Notice with the Principal Representative that the Work, or such discrete physical portion, in the opinion of the Contractor, is substantially complete under the terms of the Contract. The Contractor shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Principal Representative shall determine after inspection. If the Contractor's Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Contractor and the Notice shall then be resubmitted.

B. FINAL INSPECTION

Within ten (10) days after Contractor files written Notice that the Work is substantially complete, the Principal Representative, and Contractor shall make a "final inspection" of the Project to determine whether the Work is substantially complete and has been completed in accordance with the Contract Documents. State Buildings Programs shall be notified of the inspection not less than three (3) business days in advance of the inspection. Contractor shall provide the Principal Representative an updated punch list in sufficient detail to fully outline the following:

1. Work to be completed, if any; and
2. Work not in compliance with the Drawings or Specifications, if any.

A final punch list shall be made by the State in sufficient detail to fully outline to Contractor:

1. Work to be completed, if any;
2. Work not in compliance with the Drawings or Specifications, if any; and
3. unsatisfactory Work for any reason, if any.

The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Contractor to the Principal Representative and State Buildings Programs.

C. NOTICE OF SUBSTANTIAL COMPLETION

Notice of Substantial Completion shall establish the date of substantial completion of the Project, as indicated on the form of Notice of Substantial Completion. Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.

The Notice of Substantial Completion shall not be issued until the following have been fully established:

1. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
2. All required corrections noted on the Building Inspection Record shall have been completed unless the Principal Representative and State Buildings Programs, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
3. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by Contractor's employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
4. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
5. Contractor has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the Work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the

exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 26, D, of the Energy Performance Contract, the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed punch-list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.

Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

Contractor shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Principal Representative a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative and State Buildings Programs, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project.

D. NOTICE OF FINAL ACCEPTANCE

The Notice of Final Acceptance shall establish the completion date of the Project. It shall not be authorized until Contractor shall have performed all of the Work to allow completion and approval of the Pre-Acceptance Checklist (SBP-05).

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the Work described in Change Orders executed during late stages of the Project where a later completion date for the Change Ordered Work is expressly provided for in the Contract as amended by the Change Order, provided the Work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the Work included for which final payment will be made.

E. SETTLEMENT

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Pre-Acceptance Checklist (SBP-05) have been completed, the Notice of Acceptance (SBP-6.27) issued, and the Notice of Contractors Settlement (SBP-7.3) published. If the Work shall be substantially completed, but final acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of Contractor, the Principal Representative in his or her discretion may release to Contractor such amounts as may be in excess of three times the cost of completing the unfinished Work or the cost of correcting the defective Work, as estimated and approved by State Buildings Programs. Before the Principal Representative may issue the Notice of Contractor's Settlement and advertise the Project for final payment, Contractor shall have corrected all items

on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

1. Delivered to the State:
 - a. All warranties;
 - b. All statements to support local sales tax refunds, if any;
 - c. Three (3) complete bound sets of required operating maintenance instructions;
 - d. One (1) set of as-built Contract Documents showing all job changes, as necessary, and,
 - e. Electronic files of all above items in a format acceptable to Principal Representative.
2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.
3. Delivered to the State of Colorado Department of Personnel & Administration in accordance with C.R.S. § 24-103-210, a written disclosure of the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods and the total cost and country of origin of those five goods and whether the project was subject to any existing domestic content preferences.

Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or Contractor from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

Except as hereafter provided, on the date of final settlement thus advertised, provided Contractor has submitted a written Notice to the State that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due Contractor, the Principal Representative and the State Controller shall withhold from Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished Work or the cost to repair defective Work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with Contractor, as set forth in the published Notice of Contractor's Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative and the State Controller. At the expiration of the ninety (90) day period, the Principal Representative shall authorize the State Controller to release to Contractor all other money not the subject of such action at law or withheld based on the cost to complete unfinished Work or the cost to repair defective Work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the Work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to Contractor subject to the same conditions regarding unpaid claims.

ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE

Contractor warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. Contractor further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for defects or faulty materials or workmanship. The Contractor shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Contractor shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which were not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 44, One-Year Warranties.

ARTICLE 43. LIENS

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, §38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public Work in that final payment may not be made to a Contractor until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to Contractor in the amount of such claims.

ARTICLE 44. ONE-YEAR WARRANTIES

A. ONE YEAR WARRANTY OF THE WORK

The Contractor shall warrant to remedy defects and repair or replace the Work for a period of one year from the date of the Notice of Substantial Completion or from the dates of any Partial Notices of Substantial Completion issued for discrete physical portions of the Work. Contractor shall remedy any defects due to faulty materials or workmanship and shall pay for, repair and replace any damage to other Work resulting therefrom, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. Contractor shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that Contractor shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other Work requiring correction with reasonable promptness. Such Notice shall be in writing to Contractor.

The one year warranty of Contractor's Work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued.

B. SPECIAL WARRANTIES

In case of Work performed for which product, manufacturers or other special warranties are required by the Specifications, Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative upon completion of the Work.

These products, manufacturers or other special warranties, as such, do not in any way lessen Contractor's responsibilities under the Contract. Whenever warranties are required by the Specifications for a longer period than one year, such longer period shall govern. Administration of such extended warranties may be the responsibility of the specific manufacturer of the product being warranted and not necessarily the Contractor, unless explicitly stated in the Contract Documents.

ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

The Principal Representative and Contractor together shall make at least one (1) complete inspection of the Work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Eleven-Month Warranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year warranties do not run reasonably concurrent.

Written punch lists and reports of these inspections shall be made by Contractor and forwarded to the Principal Representative and State Buildings Programs within ten (10) days after the completion of the inspections. The punch list shall itemize all warranty items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. Contractor shall immediately initiate such remedial Work as may be necessary to correct any deficiencies or defective Work shown by this report, and shall promptly complete all such remedial Work in a manner satisfactory to the Principal Representative and State Buildings Programs.

If Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving Contractor ten (10) days written Notice of intention to do so.

The State of Colorado, acting by and through the Principal Representative, shall be entitled to collect from Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.

ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed (SC-6.26).

It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.

Contractor acknowledges that subject to any limitations in the Lease Purchase Agreement, the Fixed Limit of Construction Cost is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to which the parties may have stipulated in the Agreement, which stipulation was based on the Fixed Limit of Construction Cost. Contractor agrees that Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.

It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 26 of the Energy Performance Contract, Modification of Article 46, are reasonable times for these stages of completion of the Work, taking into such

consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.

If Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 26 of the Energy Performance Contract, Modification of Article 46.

Contractor and Contractor's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

In the first instance, specified in Article 26 of the Energy Performance Contract, Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

In the second instance, specified in Article 26 of the Energy Performance Contract, Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 26 of the Energy Performance Contract, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in Contractor's bid for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

In the third instance, when so specified in both Articles 26 of the Energy Performance Contract, both types of liquidated damages shall be separately assessed where those delays have occurred.

The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.

The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed substantial completion or final acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.

ARTICLE 47. DAMAGES

If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Contractor's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at his

or her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty Work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Contractor to which Article 36, Claims, applies shall be made in accordance with Article 36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Contractor.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES

A. STATE'S RIGHT TO DO THE WORK

If after receipt of Notice to do so, Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to Contractor and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due Contractor, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld.

B. TEMPORARY SUSPENSION OF WORK

The State shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:

1. Unsuitable weather;
2. Faulty workmanship;
3. Improper superintendence;
4. Contractor's failure to carry out orders or to perform any provision of the Contract Documents;
5. Loss of, or restrictions to, appropriations;
6. Conditions, which may be considered unfavorable for the prosecution of the Work.

If it should become necessary to stop Work for an indefinite period, Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and Contractor shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.

Notice of suspension of Work shall be provided to Contractor in writing stating the reasons therefore. Contractor shall again proceed with the Work when so notified in writing.

Contractor understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. Contractor further acknowledges and agrees that in such event that State may, upon Notice to Contractor, suspend the Work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For the Public Interest of State. If the Contract is not so terminated the Fixed Limit of Construction Cost and the Contract time shall be equitably adjusted at the time the Principal Representative directs the Work to be recommenced and gives Notice that the revenue to fund the appropriation is available.

C. DELAY DAMAGES

The Principal Representative and the State of Colorado shall be liable to Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the Work only when and to the limited extent that such hindrance or delay is caused by an act or omission within the control of the Principal Representative or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to Contractor for the payment of such a claim only if Contractor has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the Work before proceeding with the changed Work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.

ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT

A. GENERAL

If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of Contractor's creditors; or if a receiver should be appointed to take over Contractor's affairs, or if he or she should fail to prosecute Contractor's Work with due diligence and carry the Work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on Contractor and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases the right to exercise such remedy.

In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once..

B. CONDITIONS AND PROCEDURES

- 1. The Principal Representative may terminate the services of Contractor, which termination shall take effect immediately upon service of Notice thereof on Contractor and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of the Contractor's service, Contractor shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes*

over the Work and if the unpaid balance of the Contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of Contractor, such excess shall be paid to Contractor. If, however, the cost, expenses and damages as certified by the State exceed such unpaid balance of the Contract price, Contractor and the Contractor's Surety shall pay the difference to the Principal Representative.

2. The Principal Representative may require the Surety on Contractor's bond to take control of the Work and see to it that all the deficiencies of Contractor are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of Contractor pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the Work to be done by the Surety, the Surety being substituted for Contractor as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.
3. The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of Contractor, or the Surety if the Surety has been substituted for Contractor, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from Contractor and his or her Surety, or to deduct from any payment then or thereafter due Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor, provided the State approves the amount thus charged to Contractor. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes InThe Work.

C. ADDITIONAL CONDITIONS

If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and Contractor shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by Contractor shall not be subject to such conversion.

ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE

A. NOTICE OF TERMINATION

The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of Work hereunder shall be effected by delivery to Contractor of a Notice of such termination specifying the extent to which the performance of Work under the Contract is terminated and the date upon which such termination becomes effective.

B. PROCEDURES

After receipt of the Notice of termination, Contractor shall, to the extent appropriate to the termination, cancel outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any Work terminated by the Notice. With respect to such canceled commitments, Contractor agrees to:

1. settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or

she may require, which approval or ratification shall be final for all purposes of this clause; and,

- 2. assign to the Principal Representative, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of Contractor under the orders and subcontracts, consultants, subconsultants terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.*

The Contractor shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such three (3)-month period or authorized extension thereof. Upon failure of the Contractor to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of §24-107-101, C.R.S., as amended and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.

Subject to the preceding provisions, Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by Contractor and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which Contractor is unable to cancel, Contractor shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract and Contractor shall be paid the agreed amount.

The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

Contractor agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:

- 1. Completed or partially completed plans, Drawings and information; and,*
- 2. Materials or equipment produced or in process or acquired in connection with the performance of the Work terminated by the Notice.*

Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Principal Representative to the Contractor under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property

related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, §§24-109-101, et seq., C.R.S., as amended.

ARTICLE 51. CONTRACTOR'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Contractor or of any one employed by him, then the Contractor may on seven (7) days' written Notice to the Principal Representative stop Work or terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained on any plant or material, and a reasonable profit only for the Work completed. If the Principal Representative shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Contractor any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Contractor within thirty (30) days then the *Contractor* may on ten (10) days' written Notice to the Principal Representative stop Work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Contractor any amount not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the *Contractor* may terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained upon any plant or materials, and profit only for Work completed.

ARTICLE 52. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

These Special Provisions apply to all contracts except where noted in italics.

A CONTROLLER'S APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

B FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C GOVERNMENTAL IMMUNITY

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

F COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

G CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

H BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

I SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 00200.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of

this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

J EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §24-18-201 and §24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

K VENDOR OFFSET. §24-30-202(1) and §24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

L PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

M PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has

produced one form of identification required by **§24-76.5-103, C.R.S.** prior to the Effective Date of this Contract.

ARTICLE 53. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION OF LANGUAGE

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with Article 2C, the intent of the Contract. .

B. SEVERABILITY

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

C. CAPTIONS AND REFERENCES

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

D. AUTHORITY

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. INTEGRATION OF UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

F. JURISDICTION AND VENUE

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. NO THIRD PARTY BENEFICIARIES

Except for the Parties' respective successors and assigns described in §24.B, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

H. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

I. INDEMNIFICATION

1. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

2. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

J. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$500,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply.

Contractor agrees to be governed, and to abide, by the provisions of CRS 24-102-205, 24-102-206, 24-103-601, 24-103.5-101, 24-105-101, and 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Principal Representative, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS 24-105-102(6)), or (b) under CRS 24-105-102(6), exercising the debarment protest and appeal rights provided in CRS 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

K. CORA DISCLOSURE

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act.

EPC SCHEDULE B

ENERGY PERFORMANCE CONTRACT DESCRIPTION OF WORK

Please reference Town of Eagle, CO WWTP and LBWTP Solar - Investment Grade Audit (IGA) Report; submitted to the Town via email on December 7th, 2023.

EPC Schedule B, LOCAL GOVERNMENT 5/2017

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Guarantee

“Guarantee” means the warranty and guarantee made by the ESCO in **EPC Article 14** that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in this **EPC Schedule C** which shall be equal to or greater than the Political Subdivision’s annual payments used to repay the project funding, as set forth in **§29-12.5-101(3), C.R.S.** Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in ESCO directly remunerating the Political Subdivision the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the Governing Body’s consent, which shall not be unreasonably withheld, ESCO may implement additional Utility Cost-Savings Measures or FIMs, at no cost to the Political Subdivision, which may generate additional annual cost savings in future years of the Performance Period to offset future Guaranteed Annual Cost Savings shortfall.

Guarantee Period

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO as set forth in **EPC Schedule D**.

Guaranteed Annual Cost Savings

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings, Guaranteed Annual Operations and Maintenance Cost Savings, and Annual Vehicle Fleet Operational and Fuel Cost Savings guaranteed by ESCO resulting from the Project that shall occur for each year of the Guarantee Period pursuant to this **EPC Schedule C**. Guaranteed Annual Utility Cost Savings shall be determined by ESCO’s Measurement and Verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in this **EPC Schedule C**.

Guaranteed Annual Operations and Maintenance Cost Savings

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the Political Subdivision’s operation and maintenance budget.

Guaranteed Annual Utility Cost Savings

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in **Schedule C**.

Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings

“Guaranteed Annual Vehicle Fleet Operational and Fuel Cost Savings” means measurable and verifiable

ESCO guarantees that the Project shall result in Guaranteed Annual Cost Savings to the Political Subdivision, as indicated, for each year of the Guarantee Period.

Please reference IGA Section 10 Economic Analysis for Guaranteed Annual Utility Unit, Utility Cost, and Operations & Maintenance Savings. Please also reference IGA Section 10 Economic Analysis for Annual Escalation Rates and IGA Section 6.2 Baseline Utility Rates for Baseline Utility Rates.

EPC SCHEDULE D

MEASUREMENT AND VERIFICATION SERVICES PLAN

M&V Services

"M&V Services" means Services or activities relating to the measurement and verification by the ESCO of the efficiency and effectiveness of the Project, pursuant to this EPC Contract and the CEO Measurement and Verification Policy as applied.

This schedule shall use the following documents as a standard for presentation and reporting purposes.

EPC M&V Policy: Should the Political Subdivision wish to extend M&V services beyond the Guarantee Period per the M&V Term definition, the future additional annual costs to the Political Subdivision are presented in the table below. If the extended M&V costs beyond the Guarantee Period are not included in the Maximum Contract Price, they will be funded separately by the Political Subdivision.

Please reference IGA Section 9 for details of the Measurement and Verification Plan

EPC SCHEDULE E CODE COMPLIANCE REQUIREMENTS

Code Compliance Requirement

It is the intent of this schedule to initially determine the requirements for code review, construction permits, and the cost for said items with the building official and the code authority. An EPC project might include replacement of existing systems; it is not within the ESCO's or Principal Representative's authority to waive any code compliance or local permit requirements. The code official should be contacted after the list of recommended measures is developed to confirm the requirements and the potential cost of code work. While the code review agents are expected to conduct their work with due diligence, this in no way relieves the ESCO and any contractors from their obligations to design and construct the project in conformance with the adopted codes nor is it intended to transfer any duties, obligations, or liabilities of the design and construction teams to the code review agents.

*The total cost is indicated on
EPC Schedule F.*

Utility Cost Savings /FIM Measure	Code required (Y/N)	Documentation review cost (\$)	Field inspection/permit cost (\$)
Renewable Energy	Y	Included	\$0
Energy Storage	Y	Included	\$0
Total cost			\$0

Please reference IGA Section 10.8 EPC Project Budget Summary for a detailed Schedule of Values

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EPC Schedule G: Proposed Financial Cost and Cash Flow Analysis

Please reference IGA Section 10.10 Preliminary Financial Analysis for cost and Cash Flow Analysis

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EPC SCHEDULE H
Certification that Cost-weighted Average Service Life of Equipment Exceeds
Financing Term

Please reference IGA Section 7.1.7 Equipment Service Life for the Weighted Average Service Life of Equipment. Contractor certifies the maximum term of payments to be less than the Cost-Weighted Average Useful Life of utility cost-savings equipment.

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EPC SCHEDULE I

RECORD OF REVIEWS (LOCAL GOVERNMENTS)

This review process is required for all Energy Performance Contracting (EPC) work with any state agencies or Political Subdivisions participating in the Colorado Energy Performance Contracting Program (CEPCP). This document outlines and tracks selected items reviewed by the Colorado Energy Office and/or its Consultants and the Office of the State Architect (OSA), as applicable, of the Investment Grade Audit (IGA) and EPC Project Proposal contract, the IGA Audit Report and EPC Project Proposal, and the EPC documents. These reviews are not legal reviews of the documents and do not replace the Political Subdivision's legal review. The financing proposal (bank loan, bonds, internal funds, or other financing method) is not included in the CEO/OSA review. State agencies shall consult with the State Treasury's office for any financial review/reporting requirements. Political Subdivisions shall perform their own review of the financing proposal.

INVESTMENT GRADE AUDIT CONTRACT (this review shall be completed by a CEPCP member, the Principal Representative of the Governing Body of the Political Subdivision, and, as necessary, the OSA, prior to the ESCO signing the IGA contract)

The IGA Contract review establishes:

- Confirmation that the CEPCP-provided IGA contract and exhibits are being used;
- Scope of Work (IGA Exhibit A) if modified, was only modified within the generally historically allowed changes with approval of the client, the CEPCP reviewer, and OSA as applicable;
- ESCO cost and pricing elements are within the boundaries of the EPC base agreement contract with CEPCP program; and
- No additions, subtractions, or changes have been made to the IGA contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, and OSA as applicable.

CEPCP Reviewer: _____ **Date Completed:** _____

Reviewers Comments: _____

Client Reviewer: _____ **Date Completed:** _____

Reviewers Comments: _____

INVESTMENT GRADE AUDIT REPORT AND PROJECT PROPOSAL (This review shall be completed by a CEPCP member, the Principal Representative, and, as necessary, OSA, prior to finalizing the EPC Project Proposal for an EPC contract)

IGA report review addressed the following:

- IGA has met the minimum requirements as outlined in the CEPCP IGA Exhibit A, Scope of Work;
- Verifies compliance with all applicable legislation for state governments;
- Reviews existing operational assumptions and adds notes as necessary to the Principal Representative and ESCO verifying assumptions are confirmed by the Principal Representative;
- Confirms that adequate technical details follow appropriate methodologies and assumptions used to calculate savings (utility usage reduction) for each Utility Cost Savings Measure or FIM;
- Confirms costs document: engineering/design costs, contractor/vendor estimates, fees, estimated code compliance cost, etc.
- Principal Representative confirms that any operation and/or maintenance (O&M) savings proposed by the ESCO are acceptable. The sufficiency of O&M savings are not reviewed by the CEPCP;
 - Principal Representative Signature _____
 - Date: _____
- Principal Representative confirms that presented operations, schedules, set points, etc. are acceptable.
 - Principal Representative Signature _____
 - Date: _____
- Principal Representative confirms commissioning, M&V plans, and any non-verified calculated savings, are in compliance with the CEPCP and that the Principal Representative understands and accepts these items and schedules.

EPC SCHEDULE I
RECORD OF REVIEWS (LOCAL GOVERNMENTS)

- Principal Representative Signature _____
- Date: _____
- Principal Representative confirms, when applicable, the Principal Representative's annual or one-time monetary contributions are included in the financial performance schedule. The sufficiency of such contributions is not reviewed by the CEPCP.
 - Principal Representative Signature _____
 - Date: _____
- Principal Representative confirms acceptance of presented annual utility and inflation escalation rates.
 - Principal Representative Signature _____
 - Date: _____

CEPCP Reviewer: _____ **Date Completed:** _____
Reviewers Comments: _____

Principal Representative Reviewer: _____ **Date Completed:** _____
Reviewers Comments: _____

ENERGY PERFORMANCE CONTRACT (this shall be completed by a CEPCP member, the Principal Representative, and as necessary, OSA, prior to the ESCO signing the contract)

The EPC review establishes the following:

- Confirms that the CEPCP provided EPC contract and schedules are being used;
- ESCO cost and pricing elements are within the boundaries of their EPC base agreement contract with CEPCP;
- No additions, subtractions, or changes have been made to the contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, a Principal Representative legal review, and Principal Representative Controller (or equivalent);
- If modified, all modifications, updates, additions to the schedules and exhibits are within the generally historically allowed changes. All changes are tracked until accepted by CEPCP reviewer and OSA as applicable; and
- Confirms the pro-forma schedule includes all known Principal Representative funds, utility rebates, other grant funds, and all potential cost through the length of the loan.

CEPCP Reviewer: _____ **Date Completed:** _____
Reviewers Comments: _____

Principal Representative Reviewer: _____ **Date Completed:** _____
Reviewers Comments: _____

EPC SCHEDULE I

RECORD OF REVIEWS (LOCAL GOVERNMENTS)

OFFICE OF THE STATE ARCHITECT REVIEW

For all State Agency Contracts (Executive Departments and Institutions of Higher Education)

As indicated in the Letter of Delegation State Buildings Programs/Office of the State Architect to executive departments and institutions of higher education, OSA requires a review of the EPC contract and all its attached documents prior to the Principal Representative signing the EPC contract. The State Personnel Director or the State Personnel Director's designee (Office of the State Architect) has authorized the State to enter into a contract for energy analysis and recommendations pertaining to measures that would significantly increase utility and operations cost savings in the Premises, pursuant to **§24-30-2002, C.R.S.**

The OSA review includes;

- Confirmation that the CEPCP reviewer has completed and accepted the IGA Project Proposal, the utility savings guarantee, the measurement and verification plan, and all appropriate schedules;
- All additions, subtractions, or changes that were proposed to the contract have been tracked for review by the State Controller's Office and the State Attorney General's Office; and
- Modification of such agreements shall be limited to modifications historically permitted by OSA/State regarding project description; scope of work, payment provisions, etc., and does not include modification of standard "boilerplate" language in the contract except as otherwise agreed as between the parties.

OSA Reviewer:

Date Completed:

Reviewers

Comments:



STATE OF COLORADO

OFFICE OF THE STATE ARCHITECT

STATE BUILDINGS PROGRAMS

CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS

Institution/Agency: Town of Eagle, Colorado

Project No./Name: Town of Eagle Renewables Energy Savings Performance Contract

A. CERTIFICATION STATEMENT CRS 8-17.5-101 & 102 (HB 06-1343, SB 08-193)

The Vendor, whose name and signature appear below, certifies and agrees as follows:

1. The Vendor shall comply with the provisions of CRS 8-17.5-101 et seq. The Vendor shall not knowingly employ or contract with an unauthorized immigrant to perform work for the State or enter into a contract with a subcontractor that knowingly employs or contracts with an unauthorized immigrant.
2. The Vendor certifies that it does not now knowingly employ or contract with and unauthorized immigrant who will perform work under this contract, and that it will participate in either (i) the "E-Verify Program", jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired to perform work under this contract.
3. The Vendor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Vendor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate work for breach and the Vendor shall be liable for damages to the State.

or

B. SOLE PROPRIETOR AFFIDAVIT CRS 24-76.5-101 (HB 06S-1023)

1. If the Vendor is a sole proprietor, the undersigned hereby swears or affirms under penalty of perjury under the laws of the State of Colorado that (check one):
 - ☐ I am a United States citizen, or
 - ☐ I am a Permanent Resident of the United States, or
 - ☐ I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I am a sole proprietor entering into a contract to perform work for the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to starting work for the State. I further acknowledge that I will comply with the requirements of CRS 24-76.5-101 et seq. and will produce the required form of identification prior to starting work. I acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under CRS 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

CERTIFIED and AGREED to this _____ day of _____.

VENDOR:

Vendor Full Legal Name

BY:

Signature of Authorized Representative

Title

Schedule T
Notice of Substantial Completion

Notice of Substantial Completion (per ECM / FIM)

Date of Notice _____

Local Government Entity: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that **Local Government Entity** accepts the installed equipment for ECM / FIM _____ and establishes a warranty period start date of _____.

Local Government Entity Name

By _____

Title _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by **Local Government Entity Name**.

Schedule U
Notice of Final Acceptance

Notice of Final Acceptance

Date of Notice _____

Local Government Entity: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that **Local Government Entity** accepts the Project and establishes a Performance Commencement Date of _____.

Local Government Entity Name

By _____

Title _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by **Local Government Entity Name**.

**COLORADO ENERGY OFFICE
ENERGY PERFORMANCE CONTRACT AMENDMENT**

Amendment No.: _____ Contract ID No.: _____
Contractor: _____
Institution or Agency: _____
Project No./Name: _____

PARTIES. THIS AMENDMENT is entered into by and between <INSERT NAME OF POLITICAL SUBDIVISION>, Principal Representative and <INSERT NAME OF ESCO> located at <INSERT ESCO ADDRESS> hereinafter referred to as the Contractor.

FACTUAL RECITALS

NOW THEREFORE, it is hereby agreed that

1. Consideration for this Amendment consists of the payments, which shall be made pursuant to this Amendment and the promises, and agreements herein set forth.
2. It is expressly agreed by the parties that this Amendment is supplemental to the original contract, as amended (_____), collectively* referred to as the original contract, which is, by this reference incorporated herein, that all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this Amendment as though they were expressly re-written, incorporated, and included herein. (*Note: only use this language if creating Amendment #2 or higher)
3. It is agreed the original contract is and shall be modified, altered, and changed in the following respects only:

<Delete this text once populated>

Insert changes or modifications, updates, and / or changes to originally executed Energy Performance Contract here.

SUMMARY OF CHANGES					
	Pre-Const. Services Fee	Construction Services Fee	General Conditions Fee	Direct Cost of Work	Dollar Amount
Original Contract/Date					
Amendment #1/Date					
Amendment #2/Date					
Contract Sum (To Date):					
Guaranteed Maximum Price (To Date):					
Fixed Limit of Construction Cost (To Date):					

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT AMENDMENT

Persons signing for Contractor/Consultant hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

Project Name/Number: _____
Contract ID No.: _____

THE CONTRACTOR/CONSULTANT:

<INSERT NAME OF POLITICAL SUBDIVISION>, acting
by and through:
**(<INSERT NAME OF BOARD, COUNCIL, COMMISSION,
ETC.>)**

Legal Name of Contracting Entity

By: _____
Title: _____

Date: _____

*Signature

By _____
Name (print) Title

Date: _____

DRAFT



To: Mayor and Town Council

From: Jill Kane, Finance Director

Date: January 9, 2024

Re: Resolution 05, Series 2024, "A Resolution Levying General Property Taxes For the Year 2023, To Help Defray the Costs of Government for the Town of Eagle, Colorado, for the 2024 Budget Year"

REQUEST: Staff requests that the Town Council review Resolution 05, series 2024 for approval, which sets the mill levy for 2023 property taxes that will be collected in the 2024 budget year.

INTRODUCTION: The Town currently sets one mill levy for general operating purposes, collected in the General Fund, which must be certified to the Eagle County Commissioners by December 15th annually. However, due to the 2023 extraordinary legislative session and the passage of SB23B-001, the mill levy certification deadlines were extended from December 15th to January 10th.

ANALYSIS: The Town's General Fund mill levy rate presented for 2023 property taxes, for the 2024 budget year, is 2.301 (no change from the prior year).

SB23B-001 included the following modifications to assessed values:

- A temporary decrease in assessment rates for residential properties. Assessment rates were reduced from 6.795% to 6.7% (previously 7.15%).
- \$55K was exempted from the valuation for residential properties and \$30K was exempted for commercial properties.
- For jurisdictions meeting certain criteria, the state would provide a refund or backfill for the reduced property tax revenue as a result of the bill; Eagle is not expected to receive backfill from this bill.

Based on the final certification of values received from the County Assessor's office, the Town's Actual property value increased from \$1,701,498,440 to \$2,599,463,430 year over year. The Town's net assessed valuation Increased from \$165,751,310 to \$239,579,250.

SB 23-108 Temporary Mill Levy Rate Reduction:

- This bill allows local governments to issue a temporary property tax credit/temporary mill levy reduction without having voter approval to reinstate the higher previous mill levy.

The objective for the above legislation is to help alleviate the impacts that increased property valuations would have on property owners, which is important. However, the increased property values and general inflation has also had a significant impact on Town governmental expenditures as well. For example, the estimate for the Grand Avenue project has increased from approximately \$45M to \$65M, within one year, which also included a reduction in scope.

The Town makes an annual transfer from the General Fund to the Capital Improvements Fund (\$2M in 2024), the majority (\$1.5M) of which is currently earmarked for the Grand Avenue Project. These annual transfers are essential to achieve the Town's Capital Improvements needs. When staff was discussing the recommendation to maintain the current Mill Levy rate, we acknowledged that by retaining the current Mill Levy rate the Town is able to transfer those funds directly to the Grand Avenue project.

BUDGET / STAFF IMPACT: Based on the net assessed valuation, the Town's General Fund property tax collection is projected at \$551,272 compared to \$381,394 in the prior year. This is a \$169,878 (45%) increase in property tax revenue year over year, representing 4.13% of the Town's General Fund Revenue. This is a reduction of \$18,818 from the original budget of \$570,90 which was based on preliminary assessed values prior to the passage of SB23B-001. There is no staff impact.

COMMUNITY INPUT: Staff is aware of the following public comment:

12/18/23 -Keith Montag:

Good afternoon. At the suggestion expressed in today's Vail Daily column by County Assessor Mark Chapin, I am writing to respectfully implore you as Town of Eagle elected officials to demonstrate your profound leadership and appropriately adjust the mill levy for the Town. The potential property tax increase will definitely create an extreme burden on taxpayers, especially those of us who are on fixed incomes. Thanks for your consideration.

STRATEGIC PLAN ALIGNMENT/STANDARDS ACHIEVED: N/A – This resolution is a required administrative procedure.

RECOMMENDED ACTION OR PROPOSED MOTION:

Motion to **approve** or **deny** the adoption of Resolution 05, Series 2024, "A Resolution Levying General Property Taxes For the Year 2023, To Help Defray the Costs of Government for the Town of Eagle, Colorado, for the 2024 Budget Year".

ATTACHMENTS:

- Resolution 05-2024
- 2024 Certification of Mill Levy

TOWN OF EAGLE, COLORADO
RESOLUTION NO. 05
(Series of 2024)

A RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 2023, TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE TOWN OF EAGLE, COLORADO, FOR THE 2024 BUDGET YEAR.

WHEREAS, the Town Council of the Town of Eagle has adopted the annual budget in accordance with the Local Government Budget Law and Town Charter on November 14, 2023; and

WHEREAS, the amount of money necessary to balance the budget for general operating purposes from property tax revenue is \$551,272; and

WHEREAS, the 2023 net total assessed valuation for the Town of Eagle, as certified by the County Assessor is \$239,579,250.

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

Section 1. That for the purpose of meeting general operating expenses of the Town of Eagle during the 2024 budget year there is levied a tax of 2.301 mills upon each dollar of the net total assessed valuation of all taxable property within the Town of Eagle for the year 2023.

Section 2. That the Finance Director is hereby authorized and directed to certify to the County Commissioners of Eagle County, Colorado, the mill levies for the Town of Eagle as hereinabove determined and set.

INTRODUCED, READ, PASSED, ADOPTED ON JANUARY 9, 2024.

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor

ATTEST:

Jenny Rakow, Town Clerk

TO: County Commissioners¹ of Eagle County, Colorado.

On behalf of the _____, _____^A

 the _____ Town Council

 _____^B
 of the _____ Town of Eagle

 _____^C

Hereby officially certifies the following mills
to be levied against the taxing entity's GROSS \$ 240,061,950
assessed valuation of: (GROSS^D assessed valuation, Line 2 of the Certification of Valuation Form DLG 57^E)

Note: If the assessor certified a NET assessed valuation (AV) different than the GROSS AV due to a Tax Increment Financing (TIF) Area^F the tax levies must be calculated using the NET AV. The taxing entity's total property tax revenue will be derived from the mill levy multiplied against the NET assessed valuation of:

\$	239,579,250
----	-------------

(NET^G assessed valuation, Line 4 of the Certification of Valuation Form DLG 57)

USE VALUE FROM FINAL CERTIFICATION OF VALUATION PROVIDED BY ASSESSOR NO LATER THAN DECEMBER 10

Submitted: 01/09/2024 for budget/fiscal year 2024
(no later than Dec. 15) (mm/dd/yyyy) (yyyy)

PURPOSE (see end notes for definitions and examples)	LEVY²	REVENUE²
1. General Operating Expenses ^H	2.301 mills	\$ 551,272
2. <Minus> Temporary General Property Tax Credit/ Temporary Mill Levy Rate Reduction ^I	< > mills	\$ < >
SUBTOTAL FOR GENERAL OPERATING:	mills	\$
3. General Obligation Bonds and Interest ^J	mills	\$
4. Contractual Obligations ^K	mills	\$
5. Capital Expenditures ^L	mills	\$
6. Refunds/Abatements ^M	mills	\$
7. Other ^N (specify):	mills	\$
	mills	\$
TOTAL: [Sum of General Operating Subtotal and Lines 3 to 7]	2.301 mills	\$ 551,272

Contact person: (print)	Jill E. Kane	Daytime phone:	(970)	328-9624
Signed:		Title:	Finance Director	

Include one copy of this tax entity's completed form when filing the local government's budget by January 31st, per 29-I-113 C.R.S., with the Division of Local Government (DLG), Room 521, 1313 Sherman Street, Denver, CO 80203. Questions? Call DLG at (303) 864-7720.

¹ If the *taxing entity's* boundaries include more than one county, you must certify the levies to each county. Use a separate form for each county and certify the same levies uniformly to each county per Article X, Section 3 of the Colorado Constitution.

² Levies must be rounded to three decimal places and revenue must be calculated from the total NET assessed valuation (Line 4 of Form DLG57 on the County Assessor's **FINAL** certification of valuation).



To: Mayor and Town Council
From: Jenny Rakow, Town Clerk
Date: January 9, 2024

Agenda Item: Appointment of Mayor Pro Tem

REQUEST: The Town Council is requested to appoint a Mayor Pro Tem.

BACKGROUND: Pursuant to the Eagle Municipal Code, 3.09 a Mayor Pro Tem shall be elected by the Council from its own membership at the first Council meeting following the final certification of each biennial election.

The Mayor Pro Tem shall serve until the Council meeting following the final certification of the next regular Town election and shall act as Mayor during the absence of the Mayor. In the event of absence of both the Mayor and the Mayor Pro Tem, the Council shall designate another Council Member by majority vote to serve as Acting Mayor during such absence. Any Mayor Pro Tem or Acting Mayor, while serving as such, shall retain all authority granted herein to Council Members and may, at the conclusion of their service as Mayor Pro Tem or Acting Mayor, serve out the remainder of their original term.

ANALYSIS: This is an appointment by motion of someone who receives a majority of votes. This motion shall serve as the record of the appointment.

COMMUNITY INPUT: None required.

BUDGET / STAFF IMPACT: There is no budget impact for this item.

STRATEGIC PLAN ALIGNMENT / STANDARDS ACHIEVED: This is an administrative code provision that does not have a strategic plan alignment.

RECOMMENDED ACTION OR PROPOSED MOTION: MOTION: to appoint _____ to serve as Mayor Pro Tem until the next General Election in 2025.

ATTACHMENTS: None



To: Mayor Turnipseed and Town Council

From: Melissa Daruna, Assistant Town Manager

Date: January 9, 2024

Agenda Item: Terrace Park Community Feedback: Dogs Off-Leash

REQUEST: For Town Council to review the survey data and community feedback regarding allowing dogs off-leash in Terrace Park and provide staff direction on next steps.

BACKGROUND: In the spring of 2023 community members from the Terrace neighborhood inquired about potentially changing the regulations prohibiting dogs off-leash in the Terrace Park, a regulation that exists in all Town parks except for the dedicated off-leash park in Eagle Ranch. Council directed staff to conduct community engagement to gauge interest and impacts to allowing dogs off-leash in Terrace Park. In November staff released an online community survey which was open from November 9th – 20th and publicized on the website and social media channels. Staff also held an in-person community open house at the park on November 11th to hear directly from park users. The survey received 178 responses and the open house at the park had approximately 18 people attend. In December staff published the summary of the survey data ([link](#)) and summary analysis ([link](#)). Additionally, the raw data for the final, open-ended question of the survey can be viewed here ([link](#)).

Key themes from the survey and community input include:

- The majority of respondents live in the Terrace neighborhood and visit the park multiple times a week or daily.
- The most common uses of the park are for exercising pets, using the open field space, walking and playing on the playground.
- 60% of respondents generally support having dogs off-leash, 31% of respondents generally do not support having dogs off-leash and 10% of respondents were unsure.
- The survey inquired about off-leash opportunities with certain restrictions like specific hours of the day, certain times of year or having a designated fenced area. The results varied depending on the option. Having a designated fenced area received the most support.
- The final question of the survey allowed respondents to provide open-ended feedback. A summary of that feedback is provided in the summary document linked above and the anonymous answers are also provided in the raw data linked above.
- Most attendees at the park open house supported dogs off-leash and preferred no restrictions, such as a designated time of day or a fenced area. Two attendees voiced concerns about conflicts between users if unrestricted off-leash was allowed and one attendee stated they only supported dogs off-leash with restrictions to protect other users, specifically children. Staff requested all in-person attendees to either fill out the printed paper form of the survey or take it online to capture their input in the data directly.

ANALYSIS: The Town of Eagle has an off-leash dog park in Eagle Ranch, approximately 1.2 miles from the Terrace neighborhood. As part of the discussion with community members, staff asked about use of the Eagle Ranch dog park and why an additional dog park was appealing. Some residents simply want another option in their own neighborhood. Others provided direct feedback in-person as well as in the survey responses that the condition and maintenance of the Eagle Ranch dog park are concerning for residents and deter use. Specifically, the frequency of mowing not being enough as well as the management of ground squirrels and the need to fill burrow holes was mentioned. Staff acknowledge these concerns and are working to improve the park. In 2023 mowing frequency was impacted by equipment failures, an issue that has been resolved for 2024. Additionally, 2023 was the first-year ground squirrel mitigation efforts were fully reinstated. Staff anticipate seeing a reduction in the ground squirrel impact in the next 2 years. Staff also recognize the need to fill burrow holes and are evaluating ways to address that and improve the overall user experience and pet safety at the park.

Regarding Terrace Park, staff reviewed the survey data and community input and discussed impacts to park users, park management and maintenance and enforcement should a policy change be made. While 60% of the respondents support dogs off-leash in the park, the method of allowing it was less clear. The method with the most support from respondents was in a designated, fenced area (48%). Additionally, as you can read in the open-ended comments, some respondents want the off-leash option with no restrictions while others only want to allow it with restrictions in place. Residents raised concerns about safety for other park users, some citing negative interactions with dogs off leash, while others stated that there are no issues, and the Town should leave the park as is. Some residents believe dogs should be allowed off-leash if they are under "voice control" and others only want to allow dogs off-leash in the park by Terrace residents.

The Terrace Park is a public park and as such, staff do not believe access can be limited only to Terrace residents. Additionally, staff believe enforcement of allowing dogs off-leash if they are under voice control poses significant challenges for enforcement and would not alleviate the safety concerns expressed by some residents. Limiting off-leash use of the park to certain times of the year or times of the day does not appear to satisfy the need or desire of residents who would like to exercise their dogs off-leash at the park. These options also pose challenges for enforcement and may be confusing for the community. While some off-leash proponents expressed strong opposition to a fenced area, that option did receive the most support of those options offered. A final consideration for Council is the precedent that would be set by changing regulations just for Terrace Park. It is possible other neighborhoods would request to change regulations in other Town parks as well, related to dogs or other park uses.

Given this feedback and the considerations for adequate park management and enforcement, staff offers the following recommendations and options for next steps and seeks Council's feedback and direction:

Option A: Maintain the current regulations, prohibiting dogs off-leash in Terrace Park and continue to engage with animal control on enforcement and the use of discretion for issuing tickets.

Option B: Establish a fenced area to allow dogs off-leash in the park. This option will require some additional review and planning by staff. Initial estimates of costs to install fencing are \$38,000 for 0.25 acres of space. This cost includes the removal an existing earth mound, replacing the destroyed turf grass sod, and installing approximately 400 LF of fencing. Staff have also preliminarily identified an area that would not impact use of the field or playground which can be seen on this map ([link](#)). An additional note of consideration with this option is the potential for the turf in the fenced area to be impacted and or diminished due to nature of a dog park. Public Works staff believe that this potential can be best mitigated by fencing a large area which would help prevent the use from being concentrated.

Staff requests Council's feedback and direction on next steps in addressing the request to allow dogs off-leash in the park.

COMMUNITY INPUT: As noted above, community input was gathered via email from initial requests to consider allowing dogs off-leash, the online community survey and the in-person open-house held at the park.

BUDGET / STAFF IMPACT:

Option A above does not have an impact on the budget or staff resources.

Option B would require initial costs and staff resources to install the fence and some ongoing staff resources for maintenance of the fencing and potentially impacted turf grass.

STRATEGIC PLAN ALIGNMENT / STANDARDS ACHIEVED: This review and community engagement aligns with the major objective in the strategic plan to “Focus on Recreation, Events and Open Space.”

RECOMMENDED ACTION OR PROPOSED MOTION:

Option A: Provide direction to staff to maintain the park regulations, which do not allow dogs off-leash.

Option B: Motion to direct staff to move forward with plans to establish and maintain a fenced area for dogs off-leash at the Terrace Park.

ATTACHMENTS:

All supplemental documents are linked above.

Mr. Mayor and Council Members,

In May, 2023 I asked the mayor to consider some off leash time for dogs with supervision of their owners at Terrace Park. There had been a significant increase in ticketed violations all around town including the ticketing of a handicapped person who would be placed at risk of falling if their dog was on a leash. People were frustrated and angry about the disruption of their routines that many had followed for years...even decades without so much as a whiff of animal control officers.

I sincerely and respectfully do appreciate the level of effort and man-hours put into the staff recommendation that is on your agenda for this evening. The community outreach by staff to develop this recommendation is a great example of the small, closeknit community that we are here in Eagle. More open informal forums on matters around town is time well spent in my opinion.

Unfortunately, the recommendation of staff is far different than that original request I made back in May. Never did I ask or suggest a fenced area in Terrace Park as a solution to my request. Neighbor participants at the open forum conducted on November 11th were clear that they were not in favor of a fenced area. Their personal participation should be weighted toward that end as opposed to anyone who completed the survey, which in my opinion has the extreme possibility for participants to misinterpret questions resulting in skewed results that do not accurately reflect what the community truly wants.

As the instigator of this staff recommendation, I want to say that the mayor and council should reject the staff recommendation of a fenced area in Terrace Park but that they do move forward on other improvements and maintenance items badly needed and neglected for so long to bring the park up to standards for safety and proper useability.

As for myself I will continue to do as I have always done with my dog and take my medicine if it is given. As I have also said in the past, uneven enforcement of Town Code cannot be accepted and if one code is to be enforced vigorously, all codes should be enforced equally.

Tony Tvarkunas, 536 Golden Eagle