

AGENDA

CITY COUNCIL REGULAR MEETING

May 13, 2019

5:00 PM, City Council Chambers
130 S Galena Street, Aspen



I. CALL TO ORDER

II. ROLL CALL

III. SCHEDULED PUBLIC APPEARANCES

III.A. Month of the Young Child Proclamation

III.B. Arbor Day Proclamation

IV. CITIZENS COMMENTS & PETITIONS

(Time for any citizen to address Council on issues NOT scheduled for a public hearing. Please limit your comments to 3 minutes)

V. SPECIAL ORDERS OF THE DAY

- a) Councilmembers' and Mayor's Comments
- b) Agenda Amendments
- c) City Manager's Comments
- d) Board Reports

VI. CONSENT CALENDAR

(These matters may be adopted together by a single motion)

VI.A. Resolution #57, Series of 2019 - Boiler Maintenance Work at Red Brick

VI.B. Resolution #58, Series of 2019 - New City Offices Building - Shaw Construction
GMP Contract

Resolution #59, Series of 2019 - 425/455 Rio Budget Update and Budget Authority

VI.C. Resolution #56, Series of 2019 - Building Permit Software System

VI.D. Resolution 048 Series of 2019 - Wagner Park Turf Restoration Contract

VI.E. Resolution #055, Series of 2019, As Needed Excavation Contract

VI.F. Resolution #60, Series of 2019 - Revised Intergovernmental Agreement for governance of the Aspen/Pitkin County Housing Authority (APCHA)

VI.G. Minutes - April 22 & 24, 2019

VII. NOTICE OF CALL-UP

VII.A. Notice of HPC approval for Conceptual Major Development Review, Relocation and Setback Variations at 105 E. Hallam Street

VIII. PUBLIC HEARING FOR POLICY RESOLUTION

VIII.A. Resolution #52, Series 2019 - Land Use Code Amendment and APCHA Referrals (Public Hearing)

IX. FIRST READING OF ORDINANCES

IX.A. Ordinance No. 12, Series 2019 Land Use Code Amendments and APCHA Referrals, 1st Reading

IX.B. Ordinance #13, Series of 2019 - Transportation and Parking Management

IX.C. Ordinance #14, Series of 2019 - Flavored Tobacco Ban

X. PUBLIC HEARINGS

X.A. Ordinance #8, Series of 2019 - Spring Supplemental Budget

X.B. Resolution #54, Series 2019 - 411 E. Hyman Avenue Extension of Vested Rights

X.C. Ordinance #10, Series of 2019 - 119 Neale Avenue, Transferable Development Rights

X.D. Ordinance #6, Series of 2019 - Historic Preservation Benefits Code Amendments

XI. ACTION ITEMS

XII. ADJOURNMENT

PROCLAMATION

*City of Aspen, Colorado
Incorporated 1881*

WHEREAS, Kids First Early Childhood Resource Center and Pitkin County child care providers, are celebrating the Month of the Young Child in May; and

WHEREAS, by raising awareness about the importance of high-quality early childhood programs available for all children and families in our community, and advocating for policies that benefit families and educators who are supported for the demanding job they perform, and

WHEREAS, Aspen thrives when our kids thrive. Investing in our children at this crucial time will lay the foundation for learning, knowing that today's children are our future workforce, and community leaders. We all have a voice and right now, together, we will prepare our kids for the future. All of society benefits from investments in early childhood programs, and

WHEREAS building a healthy human brain is a process that begins before birth and continues into adulthood. A healthy beginning increases the likelihood that a child will be socially and emotionally healthy, as well as physically healthy, and

WHEREAS, given the appropriate learning opportunities that high quality early childhood programs provide, children acquire language, mathematical, social, emotional, artistic and physical skill development that strengthens the foundation for success in life embraced by the Aspen idea of mind, body and spirit.

NOW, THEREFORE BE IT PROCLAIMED, that the Aspen City Council and citizens of Aspen join the National Association for the Education of Young Children in proclaiming May 2019 as the

Month of the Young Child

We extend our heartfelt thanks and appreciation to all those who work to care for and educate our youngest citizens, and we commend these efforts and encourage community involvement of all citizens to recognize and support the needs of young children.

Dated the 13th day of May 2019.

PROCLAMATION

*City of Aspen, Colorado
Incorporated 1881*

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, This holiday called Arbor Day, was first observed with the planting of more than a million trees in Nebraska and is now observed throughout the nation and the world; and

WHEREAS, Trees reduce the erosion of our precious topsoil, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, Trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other products; and

WHEREAS, Trees in our city increase property values, enhance the economic vitality of business areas, beautify our community, and are a source of joy and spiritual renewal; and

WHEREAS, The City of Aspen has been recognized as a Tree City USA by the National Arbor Day Foundation; and

NOW THEREFORE LET IT BE RESOLVED, that the Mayor, City Council, and the citizens of Aspen hereby proclaim May 18th, 2019 as

ARBOR DAY

In the City of Aspen, and we urge all citizens to support effort to care for our trees and woodlands, and to support our city's community forestry program for this and future generations.

Linda Manning, City Clerk

Steven Skadron, Mayor



MEMORANDUM

TO: Mayor and City Council

FROM: Sarah Roy, Executive Director, Red Brick Center for the Arts

THRU: Jeff Woods, Manager, Parks & Recreation

DATE OF MEMO: May 6, 2019

MEETING DATE: May 13, 2019

RE: Resolution #57, Series of 2019

REQUEST OF COUNCIL: Staff requests approval of a contract between R&H Mechanical and the City of Aspen to perform a comprehensive system flush, service, internal inspections of and plant enhancements to the Red Brick Center boiler system.

PREVIOUS COUNCIL ACTION: On November 13th, 2017 through Resolution 155, the City of Aspen suspended management services for the Red Brick building outlined in its agreement (Resolution 131-2015) with the Red Brick Council for the Arts who managed the building under the operating entity known as the Red Brick Center for the Arts. At that time, City staff was directed to assess the status of the building and oversee the operational management. In a work session on January 9th, 2018, Council approved budget authority to manage the facility and oversee the operations and long-term capital improvements for the Red Brick building. In September 2018 as part of the fall supplemental request, Council approved funding in the amount of \$95,000 for this work. This funding was then carried forward to 2019.

BACKGROUND: In November of 2017, City recreation maintenance staff began familiarizing themselves with the Red Brick's mechanical systems, and quickly identified the boiler was not operating correctly through daily testing of the system and from the high number of reports from tenants about lack of heat. It was determined that although glycol and zone valves were replaced in 2017, the system was not sufficiently flushed. Therefore, residual sediment has filled registers and pumps, and contaminated the new glycol. In addition, maintenance staff discovered improperly set components within the boiler's control wiring which caused it to run at high fire and thus is wasting energy. Staff also discovered the outside temperature sensor was broken causing incorrect firing. Of further concern, staff analyzed the boiler water and found that the boiler chemistry was unbalanced to the point of having possibly caused some internal harm to the boiler heat exchangers. These are a few examples of challenges staff encountered with the boiler. The Maintenance staff was able to resolve many of the heat issues within individual tenant spaces, including a deep clean of several registers, chemical stabilization and recalibration



of valves. However, the boiler system continues to be compromised, and needs a comprehensive flushing, thorough inspection via disassembly, and several system improvements to remain viable.

Working with Asset Management, staff issued a request for bids. R&H Mechanical submitted a bid which includes draining the system, flushing and cleaning the boiler and all individual registers, thorough inspections and system improvements.

DISCUSSION: The boiler at the Red Brick controls the heat for both the Red Brick Arts and Recreation sides. The boiler is the only heating source, and without it operating properly would compromise the lease agreement with tenants to have a functioning heating system. The boiler is showing signs of critical issues such as sludge in the lines, register failure and pump failure. If the system is not flushed and properly maintained, the condition will continue to compound and result in an overall boiler failure.

R&H Mechanical submitted a bid to perform a systemwide service to achieve an optimal, efficient state. Once the work is performed, the boiler will function properly allowing for more efficient heat usage. Staff will perform regular, preventative maintenance to prevent this high cost repair in the future.

FINANCIAL/BUDGET IMPACTS:

R&H Mechanical Contract	\$99,860
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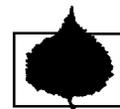
Funding for this project will be primarily achieved using the budgeted and previously approved \$95,000. The additional \$4,860 will be obtained from the Red Brick Arts operations budget.

ENVIRONMENTAL IMPACTS: Performing the one-time overall service, will return the boiler to optimal operations which will deter the use of individual space heaters used by tenants when heat issues arise. With optimal use, the boiler will run efficiently saving on unnecessary use and energy waste.

RECOMMENDED ACTION: Staff requests approval of a contract between R&H Mechanical and the City of Aspen to perform a one-time comprehensive servicing of the Red Brick Arts boiler system.

PROPOSED MOTION: I move to approve Resolution #57

CITY MANAGER COMMENTS: _____



THE CITY OF ASPEN

ATTACHMENTS:

A- Resolution #57, Series of 2019

B- R&H Mechanical Contract

RESOLUTION #57
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND R&H MECHANICAL AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract for Red Brick mechanical services, between the City of Aspen and R&H Mechanical, a true and accurate copy of which is attached hereto as Exhibit "A";

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves that Contract for Red Brick mechanical services, between the City of Aspen and R&H Mechanical, a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 13th day of May, 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, May 13th, 2019.

Linda Manning, City Clerk



PROFESSIONAL SERVICES

City of Aspen Contract No.: 2019-51110.

AGREEMENT made as of 13th day of May, in the year 2019.

BETWEEN the City:

The City of Aspen
c/o Asset Management
130 South Galena Street
Aspen, Colorado 81611
Phone: (970) 920-5079

Contract Amount:

Total: \$99,860.00

And the Professional:

R & H Mechanical LLC
c/o Brian Bahr
PO Box 810
0825 A Chambers Avenue
Eagle, CO 81631
Phone: 970-328-2699

If this Agreement requires the City to pay an amount of money in excess of \$50,000.00 it shall not be deemed valid until it has been approved by the City Council of the City of Aspen.

City Council Approval:

Date: _____

Resolution No.: _____

For the Following Project:

Red Brick Boiler Maintenance

Exhibits appended and made a part of this Agreement:

Exhibit A: Scope of Work.
Exhibit B: Fee Schedule.

The City and Professional agree as set forth below.

1. Scope of Work. Professional shall perform in a competent and professional manner the Scope of Work as set forth at **Exhibit A** attached hereto and by this reference incorporated herein.

2. Completion. Professional shall commence Work immediately upon receipt of a written Notice to Proceed from the City and complete all phases of the Scope of Work as expeditiously as is consistent with professional skill and care and the orderly progress of the Work in a timely manner. The parties anticipate that all Work pursuant to this Agreement shall be completed no later than **June 14, 2019**. Upon request of the City, Professional shall submit, for the City's approval, a schedule for the performance of Professional's services which shall be adjusted as required as the project proceeds, and which shall include allowances for periods of time required by the City's project engineer for review and approval of submissions and for approvals of authorities having jurisdiction over the project. This schedule, when approved by the City, shall not, except for reasonable cause, be exceeded by the Professional.

June 14th Interior Work to be complete - Mech RM Work will be extended

3. Payment. In consideration of the work performed, City shall pay Professional on a time and expense basis for all work performed. The hourly rates for work performed by Professional shall not exceed those hourly rates set forth at **Exhibit B** appended hereto. Except as otherwise mutually agreed to by the parties the payments made to Professional shall not initially exceed the amount set forth above. Professional shall submit, in timely fashion, invoices for work performed. The City shall review such invoices and, if they are considered incorrect or untimely, the City shall review the matter with Professional within ten days from receipt of the Professional's bill.

4. Non-Assignability. Both parties recognize that this Agreement is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other. Sub-Contracting, if authorized, shall not relieve the Professional of any of the responsibilities or obligations under this Agreement. Professional shall be and remain solely responsible to the City for the acts, errors, omissions or neglect of any subcontractors' officers, agents and employees, each of whom shall, for this purpose be deemed to be an agent or employee of the Professional to the extent of the subcontract. The City shall not be obligated to pay or be liable for payment of any sums due which may be due to any sub-contractor.

5. Termination of Procurement. The sale contemplated by this Agreement may be canceled by the City prior to acceptance by the City whenever for any reason and in its sole discretion the City shall determine that such cancellation is in its best interests and convenience.

6. Termination of Professional Services. The Professional or the City may terminate the Professional Services component of this Agreement, without specifying the reason therefor, by giving notice, in writing, addressed to the other party, specifying the effective date of the termination. No fees shall be earned after the effective date of the termination. Upon any termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material prepared by the Professional pursuant to this Agreement shall become the property of the City. Notwithstanding the above, Professional shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Professional, and the City may withhold any payments to the Professional for the purposes of set-off until such time as the exact amount of damages due the City from the Professional may be determined.

7. Independent Contractor Status. It is expressly acknowledged and understood by the parties that nothing contained in this agreement shall result in, or be construed as establishing an employment relationship. Professional shall be, and shall perform as, an independent Contractor who agrees to use his or her best efforts to provide the said services on behalf of the City. No agent, employee, or servant of Professional shall be, or shall be deemed to be, the employee, agent or servant of the City. City is interested only in the results obtained under this contract. The manner and means of conducting the work are under the sole control of Professional. None of the benefits provided by City to its employees including, but not limited to, workers' compensation insurance and unemployment insurance, are available from City to the employees, agents or servants of Professional. Professional shall be solely and entirely responsible for its acts and for the acts of Professional's agents, employees, servants and subcontractors during the performance of this contract. Professional shall indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax law, with respect to Professional and/or Professional's employees engaged in the performance of the services agreed to herein.

8. Indemnification. Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent and for an amount represented by the degree or percentage such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the wrongful act, omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

9. Professional's Insurance.

(a) Professional agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Professional shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 8 above by reason of its failure to procure or maintain

insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

(b) Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurance acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) *Workers' Compensation* insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and *Employers' Liability* insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) for each accident, ONE MILLION DOLLARS (\$1,000,000.00) disease - policy limit, and ONE MILLION DOLLARS (\$1,000,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this paragraph.

(ii) *Commercial General Liability* insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

(iii) *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate with respect to each Professional's owned, hired and non-owned vehicles assigned to or used in performance of the Scope of Work. The policy shall contain a severability of interests provision. If the Professional has no owned automobiles, the requirements of this Section shall be met by each employee of the Professional providing services to the City under this contract.

(iv) *Professional Liability* insurance with the minimum limits of ONE MILLION DOLLARS (\$1,000,000) each claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

(c) The policy or policies required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers or employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Professional. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property

damage arising from completed operations. The Professional shall be solely responsible for any deductible losses under any policy required above.

(d) The certificate of insurance provided to the City shall be completed by the Professional's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(e) Failure on the part of the Professional to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which City may immediately terminate this contract, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by Professional to City upon demand, or City may offset the cost of the premiums against monies due to Professional from City.

(f) City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(g) The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000.00 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

10. City's Insurance. The parties hereto understand that the City is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Risk Management Department and are available to Professional for inspection during normal business hours. City makes no representations whatsoever with respect to specific coverages offered by CIRSA. City shall provide Professional reasonable notice of any changes in its membership or participation in CIRSA.

11. Completeness of Agreement. It is expressly agreed that this agreement contains the entire undertaking of the parties relevant to the subject matter thereof and there are no verbal or written representations, agreements, warranties or promises pertaining to the project matter thereof not expressly incorporated in this writing.

12. Notice. Any written notices as called for herein may be hand delivered or mailed by certified mail return receipt requested to the respective persons and/or addresses listed above.

13. Non-Discrimination. No discrimination because of race, color, creed, sex, marital status, affectional or sexual orientation, family responsibility, national origin, ancestry, handicap, or religion shall be made in the employment of persons to perform services under this contract.

Professional agrees to meet all of the requirements of City's municipal code, Section 15.04.570, pertaining to non-discrimination in employment.

14. Waiver. The waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Professional to which the same may apply and, until complete performance by Professional of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

15. Execution of Agreement by City. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained herein, this Agreement shall not be binding upon the City unless duly executed by the Mayor of the City of Aspen (or a duly authorized official in his absence) following a Motion or Resolution of the Council of the City of Aspen authorizing the Mayor (or a duly authorized official in his absence) to execute the same.

16. Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.

(a) Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the City of Aspen, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a subcontractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

(b) Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

“Basic Pilot Program” means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

“Public Contract for Services” means this Agreement.

“Services” means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(c) By signing this document, Professional certifies and represents that at this time:

- (i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and
 - (ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that new employees are not illegal aliens.
- (d) Professional hereby confirms that:
- (i) Professional shall not knowingly employ or contract new employees without confirming the employment eligibility of all such employees hired for employment in the United States under the Public Contract for Services.
 - (ii) Professional shall not enter into a contract with a subcontractor that fails to confirm to the Professional that the subcontractor shall not knowingly hire new employees without confirming their employment eligibility for employment in the United States under the Public Contract for Services.
 - (iii) Professional has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Professional does not employ any new employees who are not eligible for employment in the United States; and if Professional has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Professional shall forthwith apply to participate in the Federal Basic Pilot Program and shall in writing verify such application within five (5) days of the date of the Public Contract. Professional shall continue to apply to participate in the Federal Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Professional is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.
 - (iv) Professional shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.
 - (v) If Professional obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with a new employee who is an illegal alien, Professional shall:
 - (1) Notify such subcontractor and the City of Aspen within three days that Professional has actual knowledge that the subcontractor has newly employed or contracted with an illegal alien; and
 - (2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the new employee who is an illegal alien; except that Professional shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the

subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Professional violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City of Aspen may terminate the Public Contract for Services. If the Public Contract for Services is so terminated, Contractor shall be liable for actual and consequential damages to the City of Aspen arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

(ix) If Professional operates as a sole proprietor, Professional hereby swears or affirms under penalty of perjury that the Professional (1) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (2) shall comply with the provisions of CRS 24-76.5-101 *et seq.*, and (3) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

17. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflicts of Interest.

(a) Professional warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Professional for the purpose of securing business.

(b) Professional agrees not to give any employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to this Agreement, or to any solicitation or proposal therefore.

(c) Professional represents that no official, officer, employee or representative of the City during the term of this Agreement has or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof, except those that may have been disclosed at the time City Council approved the execution of this Agreement.

(d) In addition to other remedies it may have for breach of the prohibitions against contingent fees, gratuities, kickbacks and conflict of interest, the City shall have the right to:

1. Cancel this Purchase Agreement without any liability by the City;
2. Debar or suspend the offending parties from being a Professional, contractor or subcontractor under City contracts;
3. Deduct from the contract price or consideration, or otherwise recover, the value of anything transferred or received by the Professional; and
4. Recover such value from the offending parties.

18. Fund Availability. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement contemplates the City utilizing state or federal funds to meet its obligations herein, this Agreement shall be contingent upon the availability of those funds for payment pursuant to the terms of this Agreement.

19. General Terms.

(a) It is agreed that neither this Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified, changed, terminated or amended, waived, superseded or extended except by appropriate written instrument fully executed by the parties.

(b) If any of the provisions of this Agreement shall be held invalid, illegal or unenforceable it shall not affect or impair the validity, legality or enforceability of any other provision.

(c) The parties acknowledge and understand that there are no conditions or limitations to this understanding except those as contained herein at the time of the execution hereof and that after execution no alteration, change or modification shall be made except upon a writing signed by the parties.

(d) This Agreement shall be governed by the laws of the State of Colorado as from time to time in effect. Venue is agreed to be exclusively in the courts of Pitkin County, Colorado.

20. Electronic Signatures and Electronic Records This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement binding on the Parties, notwithstanding the possible event that all Parties may not have signed the same counterpart. Furthermore, each Party consents to the use of electronic signatures by either Party. The Scope of Work, and any other documents requiring a signature hereunder, may be signed electronically in the manner agreed to by the Parties. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic documents, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

20. Successors and Assigns. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the Professional respectively and their agents, representatives, employee, successors, assigns and legal representatives. Neither the City nor the Professional shall have the right to assign, transfer or sublet its interest or obligations hereunder without the written consent of the other party.

21. Third Parties. This Agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties, except to parties to whom Professional or City may assign this Agreement in accordance with the specific written permission, any right to claim damages or to bring any suit, action or other proceeding against either the City or Professional because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.

22. Attorney's Fees. In the event that legal action is necessary to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees.

23. Waiver of Presumption. This Agreement was negotiated and reviewed through the mutual efforts of the parties hereto and the parties agree that no construction shall be made or presumption shall arise for or against either party based on any alleged unequal status of the parties in the negotiation, review or drafting of the Agreement.

24. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Professional certifies, by acceptance of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction with a Federal or State department or agency. It further certifies that prior to submitting its Bid that it did include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. In the event that Professional or any lower tier participant was unable to certify to the statement, an explanation was attached to the Bid and was determined by the City to be satisfactory to the City.

25. Integration and Modification. This written Agreement along with all Contract Documents shall constitute the contract between the parties and supersedes or incorporates any prior written and oral agreements of the parties. In addition, Professional understands that no City official or employee, other than the Mayor and City Council acting as a body at a council meeting, has authority to enter into an Agreement or to modify the terms of the Agreement on behalf of the City. Any such Agreement or modification to this Agreement must be in writing and be executed by the parties hereto.

26. Authorized Representative. The undersigned representative of Professional, as an inducement to the City to execute this Agreement, represents that he/she is an authorized representative of Professional for the purposes of executing this Agreement and that he/she has full and complete authority to enter into this Agreement for the terms and conditions specified herein.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement of which shall be deemed an original on the date first written above.

CITY OF ASPEN, COLORADO:

PROFESSIONAL:

[Signature]

[Signature]

By: _____
[Name]

By: Brian R Bahr
[Name]

Title: _____

Title: VP

Date: _____

Date: 5-1-2019

Approved as to form:

City Attorney's Office

EXHIBIT A & B PROFESSIONAL SERVICES AGREEMENT

Attached Bid Proposal Form

R & H MECHANICAL, LLC

"People and Products You Can Count On"

**Proposal
For**

City of Aspen

**2019-51110 Red Brick Center Boiler Maintenance
Project**



R & H MECHANICAL, LLC

"People and Products You Can Count On"

PO BOX 810, 0825A CHAMBERS AVE, EAGLE, CO 81631

PHONE: (970) 328-2699 FAX: (970) 328-0234

Proposal Submitted to City of Aspen		Date June 15, 2018	Prepared by: Brian R. Bahr
Street 130 South Galena Street		Job Name City of Aspen Red Brick Boiler Maintenance	
City, State and Zip Code Aspen, CO 81611		Job Location Aspen	
Phone 970-544-4104	Email brad.fite@cityofaspen.com	Contact Brad Fite	Cell 970-309-5426

Payment to be made as follows: DRAW UPON COMPLETION OF EACH PHASE.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation

Insurance. Note: we may withdraw this proposal if not accepted within 30 days.

We hereby submit specifications and estimates for:

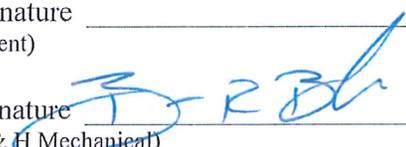
Red Brick Boiler Maintenance Project
Per City of Aspen Bid Proposal Request
Project # 2019-51110

R & H Mechanical to provide / perform the following:

- 1) Drain the Red Brick Boiler system of existing fluids (into totes mounted on our flat-bed trailer).
- 2) Haul the fluids to the Eagle County Evaporation pit for proper disposal.
- 3) Isolate the boilers from the main system and prepare to clean both parts of the system separately (keep all the solids from passing through the boiler heat exchangers).
- 4) Remove approximately 28 radiators – all clearly marked for re-installation.
- 5) Wash the inside of the radiators using a jitter.
- 6) Install PEX to join the pipes were the radiators have been removed to allow restriction free flushing of branch lines.
- 7) Fill the *main system* with a sequence of cleaning and de-scaling fluids per Patterson-Kelly recommendations.
- 8) Circulate all parts of the system by sequencing zone valves and balancing valves.
- 9) Fill the *boilers* with a sequence of cleaning fluids per Patterson-Kelly recommendations.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above, and is considered to be part of the consideration for this contract (when signed).

Signature _____ Date _____
(Client)

Signature  _____ Date 7-25-2019
(R & H Mechanical)

R & H MECHANICAL, LLC

"People and Products You Can Count On"

PO BOX 810, 0825A CHAMBERS AVE, EAGLE, CO 81631

PHONE: (970) 328-2699 FAX: (970) 328-0234

- 10) Circulate the boilers.
- 11) Drain fluids after each step to be eventually hauled to the Eagle County evaporation pit.
- 12) Rinse the system with fresh water and drain.
- 13) Rinse boilers with fresh water and drain.
- 14) Install a low-water cut-off above the level of the boiler pumps.
- 15) Install proper strainers on the boilers.
- 16) Install side-stream bag filters on the main system or an in-line filtration system with pressure bypass.
- 17) Install drains on the strainers/filters for maintenance.
- 18) Repair the leaking boiler vent pipe that is causing rust on the top of one of the boilers.
- 19) Remove a rear section of one of the boiler's heat exchangers to inspect the condition of the heat exchanger metal - **Repairs if needed at additional cost*
- 20) Fill the system with prepared de-ionized water and the appropriate corrosion inhibitors, pH level and with 30% propylene glycol.
- 21) Check the system for leaks/pressure test.
- 22) Circulate system and send in fluids to the lab for analysis.
- 23) Based on lab analysis inhibitors adjusted accordingly. **Adjustment if needed at additional cost*
- 24) Circulate cool water periodically in the summer to insure filtration and distribution of inhibitors. **Cool water circulation if requested will be provided at additional cost*
- 25) Correct the horizontal flue on the domestic hot water tank.
- 26) Install new 50-gallon automatic glycol feeder & fill with 30% treated glycol / water.
- 27) Test and inspect boiler system water regularly for the continued maintenance of the system. **Future testing / inspection / water samples to be provided @ additional cost.*

TOTAL: \$99,860.00

Not Included: Boilers, Pumps, Air Separator, Zone Valves, Low Voltage Controls, Warranty of any equipment or existing equipment & systems, Operation of any existing equipment or pre-existing conditions. *Line Voltage Required (By others) to allow standalone pump operation during system flushing. Boiler / System Repairs, PH / Water Quality Adjustments after new system fill, Summer Circulation, future tests / inspection / water analysts (all can be provided at additional cost).

Notes: By following the above scope of work the system will be cleaned & large amounts of existing system sediment & debris will be removed. This is NO GUARENTEE that after this work has taken place the system will be "free & clear" from sediment and debris. Additionally flushing & filling of this system may be necessary for proper maintenance & water quality.

THANK YOU!

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above, and is considered to be part of the consideration for this contract (when signed).

Signature _____ Date _____
(Client)

Signature  _____ Date 4-25-2019
(R & H Mechanical)



BID PROPOSAL FORM

PROJECT NO. : 2019-51110

BID DATE: April 26, 2019

PROJECT: Red Brick Boiler Maintenance Project

PROPOSAL SUBMITTED BY: RTH Mechanical LLC
BIDDER

BIDDER'S BID PROPOSAL

TO: The Governing Body of the City of Aspen, Colorado

The undersigned responsible bidder declares and stipulates that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same item, and that it is made in pursuance of and subject to all the terms and conditions of the advertisement for bid, the invitation to bid and request for bid, all the requirements of the bid documents including the statement of work for this bid, all of which have been read and examined prior to signature. The bidder agrees to keep this bid open for Sixty (60) consecutive calendar days from the date of bid opening.

The City of Aspen reserves the right to make the award on the basis of the bid deemed most favorable to the City, to waive any informalities or to reject any or all bids.

By signing this document, Bidder certifies and represents that at this time:

- (i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and
- (ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that it does not employ illegal aliens.

I hereby acknowledge receipt of ADDENDUM(s) numbered 1 through 1.
#only (1) addendum dated 4-19-2019

Task Description	Cost
1 Drain the Red Brick Boiler system of existing fluids (into totes mounted on our flat-bed trailer).	
2 Haul the fluids to the Eagle County Evaporation pit for proper disposal.	
3 Isolate the boilers from the main system and prepare to clean both parts of the system separately (too keep all the solids from passing through the boiler heat exchangers).	
4 Remove approximately 28 radiators – all clearly marked for re-installation (this is simple as all radiators appear have unions to quickly disconnect them).	
5 Wash the inside of the radiators using a jetter.	
6 Install PEX to join the pipes were the radiators have been removed to allow restriction free flushing of branch lines.	
7 Fill the <i>main system</i> with a sequence of cleaning and de-scaling fluids per Patterson-Kelly recommendations.	
8 Circulate all parts of the system by sequencing zone valves and balancing valves.	
9 Fill the <i>boilers</i> with a sequence of cleaning fluids per Patterson-Kelly recommendations.	
10 Circulate the boilers.	
11 Drain fluids after each step to be eventually taken to the Eagle County evaporation pit for disposal.	
12 Rinse the system with fresh water and drain.	
13 Rinse boilers with fresh water and drain.	
14 Install a low-water cut-off above the level of the boilers' Grundfos pumps,	
15 Install proper strainers on the boilers.	
16 Install side-stream bag filters on the main system or an in-line filtration system with pressure bypass.	
17 Install drains on the strainers/filters for maintenance.	
18 Repair the leaking boiler vent pipe that is causing rust on the top of one of the boilers.	
19 Remove a rear section of one of the boiler's heat exchangers to inspect the condition of the heat exchanger metal - repair the boilers if needed.	
20 Fill the system with prepared de-ionized water and the appropriate corrosion inhibitors, pH level and with 30% propylene glycol.	
21 Check the system for leaks/pressure test.	
22 Circulate system and send in fluids to the lab for analysis.	
23 Adjust inhibitors accordingly.	
24 Circulate cool water periodically in the summer to insure filtration and distribution of inhibitors.	
25 Correct the horizontal flue on the domestic hot water tank.	
26 Install a transfer pump and tank for prepared make-up water.	

27 Certified manufacturer's technician to commission start-up of system.

Total Bid in Numbers: \$99,860.⁰⁰

Total Bid in Words: Ninety Nine Thousand Eight Hundred Sixty Dollars and ⁰⁰/₁₀₀ -

I acknowledge that in submitting this bid it is understood that the right to reject any and all bids has been reserved by the owner.

Authorized Officer: Brian R Bahr, Title: VP

Full name signature: B-R-Bahr

Company address: 40 Sunset Drive Unit #10
Basalt, CO 81621

Telephone number: 970-471-5677

Email Address: brianb@landmechanical.com

Attested by: [Signature]
ESTIMATOR

MEMORANDUM

TO: Mayor Skadron and Aspen City Council
FROM: Robert Schober, Capital Asset Project Manager
THROUGH: Jeff Pendarvis, Interim Capital Asset Manager
DATE OF MEMO: May 6, 2019
MEETING DATE: May 13, 2019
RE: New City Offices 425 & 455 Rio Grande: Shaw Construction LLC.
– GMP Contract Change, Core & Shell

REQUEST OF COUNCIL:

Staff requests City Council approval of a contract with Shaw Construction, LLC (Shaw) for the construction of the New City Offices at 425/455 Rio Grande. The contract is for a guaranteed maximum price (GMP) of \$24,793,764 and includes the remainder of the building construction scope from mass excavation & foundations through interior finishes.

Staff also request that expenditure of project contingency and unallocated funds be authorized as an administrative process, with City Manager oversight and reporting to City Council as discussed on the May 6, 2019 work session. These approvals would be subject to detailed review by staff and the City's Owner Representative, Concept One Group.

PREVIOUS COUNCIL ACTION:

November 6, 2018 – The City voters approved proceeding with construction of the city offices at the Galena/Rio Grande site.

City of Aspen Ballot Question 2D

Option A 43.21%

Option B 56.79%

November 13, 2018 – Council approved the 2019 Budget which included funds to move forward with construction of the city office solution. The budget included the costlier option for city offices (Option A), but also incorporated the cash flow anticipated under that contract, which will need to be altered to reflect the voter approved site (Option B).

December 10, 2018 – Council adopted Resolution 149 (Series 2018) authorizing reimbursement up to \$28,732,000 in project costs that may be incurred prior to formally securing financing for municipal offices.

On February 11, 2019, Staff presented to Council for execution a GMP contract with Shaw Construction in the amount of \$3,150,979 to start the deconstruction of the old ACRA building, complete utility upgrades and install the underground infrastructure for the new city office building (confirmed via resolution 16-2019).

PROJECT PROGRESS TO DATE:

The design team consisting of the Asset Department, Charles Cunniffe Architects and the City's Owner Representative, Concept One Group, has prepared construction documents and submitted for a Core & Shell building permit. Shaw was brought onto the project team to provide pre-construction services and assist with the design team value engineering exercise.

The utility and infrastructure upgrades that were previously approved are now underway. The deconstruction of the former ACRA building is completed and the right of way (ROW) work began as scheduled April 1, 2019.

The execution of this contract will allow for the construction of the new office building to continue, on-schedule and within the overall project budget. Shaw will complete the utility ROW work and transition into excavation beginning this summer. This schedule allows for the placement of concrete for building foundations with vertical construction scheduled to begin at the end of the 2019.

DISCUSSION:

Today staff seeks the approval and execution of a GMP structured contract with Shaw in the amount of \$24,793,764. Staff and the design team have reviewed the details of the contract and feel that it is reasonable for the defined project scope.

The cost of this contract includes all aspects of the verified programming established at the onset of the project. An additional 6914 square feet of community space has been added to the building as a result of Council direction and is included in the GMP

Allowances are being carried for interior finishes and items without the required specifications to finalize pricing at this time. This approval will continue to move the project forward as interior programming is finalized, fit & finishes are selected and allows the project to stay on-schedule and within budget for completion in 2021.

Staff requests that the owner's contingency be managed administratively by the City Manager and with monthly reporting of contingency use to the City Council. The rationale for this authority rests in timing issues. Some logistical constraints of a construction project are that many change order approvals may be on the critical path that do not coincide with the City Council's meeting schedule. The project team will be involved in vetting all change orders prior to presenting them to the City Manager for consideration. This authority would be delegated by resolution.

FINANCIAL/BUDGET IMPACTS:

The summary below details project costs for the New City Offices at 425/455 Rio Grande which has been incorporated into the 2019 Asset Plan Fund for the second reading of the Spring Supplemental Budget. The Shaw GMP Building contract is being requested in the amount of \$24,793,764. Project indirect costs and a staff recommended owner contingency of 10% are included to bring the overall New City Offices at 425/455 Rio Grande budget to \$34,240,260:

Item Description	Cost
New City Offices 425/455 Rio Grande - Infrastructure	\$2,328,296
New City Offices 425/455 Rio Grande - Building Contract (For Approval)	\$24,793,764
Indirect Costs - Design, CMA, Testing, Permits	\$4,218,200
Owner Contingency	\$2,900,000
Total City Offices - 425/455 Rio Grande	\$34,240,260

The funding for this contract addendum stays within the current overall city offices project budget for the construction of the New City Offices at 425/455 Rio Grande, including a renovation of the existing Rio Grande Building and the renovation of the Armory:

Project	Cost
425/455 Rio Grande	\$34,240,260
Budgeted Cost Estimate - Armory Building	\$13,911,660
Total Project Costs City Offices	\$48,151,920

RECOMMENDED ACTION: Staff recommends City Council approval of the Shaw GMP contract change (Resolution 58-2019) in the sum of \$24,793,764 and confirmation that contracts and change orders within the revised approved budget may be executed administratively (Resolution 59-2019).

CITY MANAGER COMMENTS: _____

ATTACHMENTS:

Exhibit A- Shaw Construction GMP for the New City Offices 425/455 Rio Grande
 Exhibit B – New City Offices 425/455 Rio Grande Budget Update



RESOLUTION # 58

(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AUTHORIZING THE CITY MANAGER OR ASSISTANT CITY MANAGER TO EXECUTE A CONTRACT ADDENDUM TO THE CONTRACT PREVIOUSLY ENTERED BETWEEN THE CITY OF ASPEN AND SHAW CONSTRUCTION LLC, PURSUANT TO RESOLUTION #15 (SERIES OF 2016).

WHEREAS, the City of Aspen and Shaw Construction LLC previously entered a contract for the City of Aspen Civic Space Relocation Project for the Police Station and Civic Offices pursuant to Resolution #15 (Series of 2016); and,

WHEREAS, there has been submitted to the City Council a Guaranteed Maximum Price (GMP) contract addendum for the New City Offices, 425/455 Rio Grande Building, between the City of Aspen and Shaw Construction LLC, a true and accurate copy of which is attached hereto as “Exhibit A”.

WHEREAS, the City Council has determined that it is in the best interest of the City of Aspen to approve the contract change pursuant to the terms thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

The City Council of the City of Aspen hereby approves a contract addendum regarding the GMP for the New City Offices 425/455 Rio Grande Building between the City of Aspen and Shaw Construction a copy of which is attached hereto and incorporated herein and does hereby authorize the City Manager to execute said addendum on behalf of the City of Aspen.

INTRODUCED AND ADOPTED by the City Council of the City of Aspen on the 13th, day of May 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, May 13, 2019.



Linda Manning, City Clerk

Exhibit A - Shaw Construction GMP for the New City Offices 425/455 Rio Grande

May 7, 2019

Project:

Aspen City Offices

Aspen, CO

**City Offices 50% CD / Permit
GMP WORKSCOPE NARRATIVE**

For:

City of Aspen (COA)



City Offices

All work shall be complete pursuant to the plans and specifications unless clarified or noted below.

General Information

- The City Offices ACO Build Back GMP is based upon drawings provided by CCA
 - Permit Drawing pdf set dated 3/5/2019 (majority of individual drawings are dated 2/7/2018)
 - Specifications date 2/5/2018

- The GMP is also based upon the following Clarification Exhibits
 - Exhibit A - Updated basement layout document titled “Proposed Basement_2019-03-27”
 - Exhibit B - Updated construction type 2B document titled “Change to Construction Type IIB_2019-02-13”
 - Exhibit C - Updated parking lot design document titled “Change Pavers to Asphalt”
 - Exhibit D - Updated hardscape paving at plaza level document titled “Hardscape revisions_2019-03-27”
 - Exhibit E - Interior tenant finish document titled “Interior Programming_2019-03-28”
 - Exhibit F - Technology scope document titled “Technology Locates_2019-03-29”
 - Exhibit G – Plaza Info (Waterproofing systems, concrete paving, rigid insulation, and gravel base locations)
 - Exhibit H – Exterior Waterproofing & Insulation
 - Exhibit I – Storefront & Rustwall
 - Exhibit J – Drywall & Ceiling Assemblies
 - Exhibit K - Interiors

- Allowance amounts include all applicable labor and materials costs to complete the allowance work, unless otherwise noted.

- Additional work or impacts to the baseline schedule that are not the responsibility of the Contractor may require a schedule extension and/or overtime that will be the responsibility of the Owner.

- Shaw assumes responsibility for the costs associated with supplying the project with temporary utilities for the duration of construction as set forth in the project schedule or until substantial completion of the project is attained. All cost associated with utilities beyond this time are the responsibility of the Owner.

- All applicable permits are the responsibility of the Owner.

- Pricing is based on today’s cost indices for materials and commodities. Due to the volatility in local, national, and world markets our pricing excludes any upcoming increases due to tariffs or “trade wars.” Shaw is not carrying any contingency to cover this risk. If pricing increases are realized as described above Shaw will present all information and will be reimbursed under future PCO(S).

- It is assumed that all dimensions, elevations, surveying points shown on the CCA drawing set are accurate and have been coordinated with sub consultants.
- Any details from the Police Department Project that are not included in the ACO drawing set have not been incorporated into pricing, unless clarified in the following pages.
- Contractor Contingency has been included to cover costs Shaw will incur that the level of drawings does not show, or subcontractors have excluded / missed. This is based on our experience in the market and our recent experience with the subcontractor base. It is solely for the use of Shaw in completing the work shown and is not intended for any owner changes.
- Design Contingency has been included to cover costs that the project will incur based on the current level of drawings and the assumed progression of design beyond what is currently shown. It is not intended to cover design additions / scope increases.
- Estimating Contingency has been included to cover the unanticipated costs associated with the known-unknowns in quantities, unit rates, and scope gaps that Shaw Construction has applied that were not priced by the subcontractors due to pricing time frame.
- General conditions are included for a 17-month duration. Any changes made by the Owner may result in schedule extension and additional general conditions costs. No schedule time or general conditions costs have been included for the Rio Grande Building renovation work. Schedule and GCs will be determined when scope and design is finalized.

Section 002050 – Site Support

A. Includes

1. Costs for 20 weeks of real time monitoring to a web-based continuous system for acoustical, weather, dust, and vibration systems; these costs are included with the city offices pricing
2. Construction survey including final drainage and grading report
3. Continual rental of scaffolding at garage entrance that was previously installed during Utilities portion of work
4. 6' tall site construction fence rental
5. Shaw equipment
6. Shaw dumpsters

Section 002220 – Site Demolition

A. Includes

1. Removal of existing Galena Plaza to new limits of landscaping and pavers
2. Approximately 450 tons of concrete removal; sidewalks, driveway pans, walls, stairs, interior slab of parking garage, etc. Includes haul off and dump fees

Section 002315 – Excavation & Fill

A. Includes

1. Excavation and export of approximately 6,000 cy for basement due to minimal onsite storage for potential reuse; assumes existing material capable of 1:1 slope excavation
2. Approximately 1,000 cy of import fill for backfill of basement
3. Other structures based on excavated materials to be exported and backfill to be all import structural fill
4. Backfill and prep of interior slabs included as import fill with ¾" rock

5. 4" thick base under plaza level concrete where snowmelt does not occur
6. Geofoam at Grand Stair Void
7. Foundation perimeter drain
8. Site wall drains

B. Excludes

1. Dewatering during excavation and backfill
2. Excludes permanent dewatering systems

Section 002505 – Site Utilities

A. Includes

1. Trench, conduits, backfill of fiber optic line, CATC, and Telephone line in parking lot
2. Trench, conduits, backfill of electrical line from switchgear in Rio Grande island to new building transformer via parking lot
3. Main electrical cable from switchgear in Rio Grande island to new building transformer
 - a. 2 runs of 3 phase 25kV, 1/0 AWG, Okonite cable – 276 lf per run
 - b. 6 total 25kV, 1/0 loadbreak elbows in new building transformer
 - c. 6 total 25kV, 1/0 loadbreak elbows in existing switchgear vault in Rio Grande
4. Trench and backfill of gas line to building
5. 5' diameter x 12' deep stormwater drywell included per VE document in lieu of 4' diameter x 17' deep drywell
6. Sand and oil interceptor included in parking lot due to asphalt parking lot in lieu of concrete and permeable pavers per Exhibit C

B. Excludes

1. City fiber work for completing the "Aspen Triangle" loop. Scope is still being finalized and can be priced when complete.
2. Fiber optic, CATV, and Telephone cable to building
3. Gas piping and meter
4. Install of new building transformer

Section 002740 – Asphalt Paving

A. Includes

1. 4" asphalt at parking lot per Exhibit C

B. Excludes

1. Any scope in Rio Grande and Mill Street
2. Removal and Replacement along bank entry for electrical conduit; conduit to be installed from switchgear located in Rio Grande

Section 002750 – Site Concrete

A. Includes

1. 4" thick sidewalks
2. 4" thick timeline entry walk with exposed aggregate finish
3. 4" thick walks at galena plaza with exposed aggregate finish in lieu of pavers; see Exhibit G
4. 5" thick sidewalk replacement adjacent to bank

B. Excludes

1. Parking bands and 8" paving in parking lot; changed to asphalt

2. Sandblasting or any other concrete wall finish
3. Colored concrete

Section 002905 – Landscape

- A. Includes
1. Irrigation based on Landscape Contractor's assumptions for 20 irrigation zones (see allowances)
 2. All trees at 2" caliper
 3. 60/40 shrub to perennials ratio of measured bed area
 - a. Shrub quantities based on four foot spacing
 - b. Perennial quantities based on 12" spacing
 4. Hydrotech Lawn Mix grow media roof included for 8" depth at all planting and sod locations
- B. Excludes
1. Irrigation design
 2. Pavers; permeable nor non-permeable
 3. Landscape warranties and maintenance past 1 year
 4. Any additional gravel base/lightweight topsoil at existing garage to account for elevation change at tie-in for new building at plaza level. Dimensions not provided on drawings/details at this time – sheet A9.6.

Section 002980 – Site Furnishings

- A. Includes
1. No site furnishings
- B. Excludes
1. Bike racks, tables, chairs, trash receptacles, umbrellas and other exterior furnishings are assumed to be furnished and installed by the owner.

Section 003310 – Cast in Place Concrete

- A. Includes
1. 3,500 SF basement as indicated in VE documents for reduction in basement
 2. Micropiles assumed to be drilled to depths no deeper than 20 foot in length
 3. 5.5" slab on deck at all locations where Vulcraft decking shown
- B. Excludes
1. Temporary shoring for the concrete slab on decks
 2. Moisture block admixture or topping at the concrete
 3. Concrete foundation for plaza level stone benches

Section 004000 – Masonry

- A. Includes
1. 2 levels at southwest stair and elevator cores included as 8" smooth CMU
 2. ST-1 – adhered stone veneer; San Miguel Santa Fe Blend
 3. ST-2 same as ST-1
- B. Excludes
1. All stone benches
 2. Graffiti Coatings

Section 005120 – Structural & Misc. Steel

- A. Includes
 - 1. Decking at Levels 1 through 3 to be 18-gauge Composite Galvanized Decking
 - 2. Standard ladder in lieu of a ship ladder for Roof Access.
 - 3. Four (4) pipe bollards (2 at Trash Roll-up Door & 2 at New Transformer Location)

- B. Excludes
 - 1. Architecturally Exposed Structural Steel (AESS).
 - 2. Architectural or decorative column covers.
 - 3. Interior or Exterior Sunshades
 - 4. Galvanized finishes

Section 007120 – Waterproofing

- A. Includes
 - 1. GMX Ultrashield fluid applied vertical waterproofing at outside face of concrete below grade basement walls and stem walls
 - 2. 215 mil layer of American Hydrotech Monolithic Membrane MM6125 system at plaza at locations indicated in Exhibit G consisting of:
 - a. System Primer
 - b. 90 mil hot rubberized asphalt
 - c. Reinforcing fabric
 - d. 125 mil hot rubberized asphalt
 - e. Hydroflex RBII Root Barrier and Protection Course
 - 3. Gardendrain GR30 and filter fabric between MM6125 system and Hydrotech growing media at irrigated areas

- B. Excludes
 - 1. Fluid applied moisture mitigation for horizontal concrete
 - 2. Any application at open air side of mechanical well and light well
 - 3. Waterproofing below slab on grade in basement

Section 007210 – Building Insulation

- A. Includes
 - 1. 2” GMX Thermal Drain R-10 board to outside face of concrete below grade basement walls
 - 2. Exterior walls with Stone or Metal Panels: R-21 fiberglass batt w/ 6 mil poly vapor barrier glued to warm side of exterior walls
 - 3. Foam pack to exterior windows, doors, and penetrations for air sealing
 - 4. 3.5” thick DOW Thermax mechanically fastened to inside face of basement walls and CMU block wall as indicated in Exhibit H
 - 5. R-21 unfaced batt insulation at drop ceilings as indicated in Exhibit B
 - 6. 1.5” thick standard XPS 25 psi rigid insulation to outside of framed walls
 - 7. 5.5” thick spray polyurethane foam to underside of metal deck as indicated in Exhibit B
 - 8. Acoustical unfaced batt (R11/R19) for interior (4”/6”) framed partition walls, respectively
 - 9. Basement and Main Level Slab: 2” XPS beneath concrete
 - 10. Snowmelt locations: 2” XPS beneath concrete sidewalks and 4” XPS beneath plaza level walks

- B. Excludes
 - 1. Rigid insulation at plaza level where snowmelt is absent
 - 2. Rigid, batt, or spray foam insulation at roof overhang
 - 3. Spray foam insulation on exterior walls

Section 007260 – Vapor Retarders

- A. Includes
 - 1. 15 mil Stego wrap vapor barrier at basement and main level slab
 - 2. Spray applied vapor permeable weather barrier at metal panels and stone veneer

Section 007410 – Metal Panels

- A. Includes
 - 1. RustWall metal wall panels where shown and additional panels where indicated in Exhibit I
 - 2. Metal wall panels are unfinished and will naturally rust over time
- B. Excludes
 - 1. Pre rusting of panels and flashings

Section 007530 – Elastomeric Roofing

- A. Includes
 - 1. 60 mil Carlisle single ply EPDM membrane at R1, R4, and R5
 - 2. 2-layers 4” polyiso rigid insulation at R1 only
 - a. Base layer to be mechanically fastened to decking
 - b. 2nd layer to be adhered to base layer
 - 3. 20-year warranty
 - 4. Additional mil thickness at ballasted PV system
 - 5. ½” DensDeck adhered cover board
 - 6. 334 lf of walkway pads
 - 7. 1 roof hatch
 - 8. Roof anchor system

Section 008000 – Doors, Hardware & Glazing

- A. Includes
 - 1. Aluminum entrance doors to be Manko 150i thermally broken wide stile doors
 - 2. Aluminum storefront to be Manko 2450XPT system in Dark Bronze anodized finish in locations as shown in Exhibit I
 - 3. Operable windows to be Manko 3232i in Dark Bronze anodized finish with auto operators on each
 - 4. Insulated glass to be double glazed 1-3/4” units in all storefront. Units to be SNX62/27 low E over MC37 clear, over ¼” clear, tempered where required by code.
 - 5. Skylight to be Skyline series elliptical single slope with 6 bays along length and 6 bays up slope. Framing to be same Dark Bronze anodized finished and glazed with 9/16” units, SN68 low E over SN68 Low E, over 5/16” clear HS lami with argon. Exterior framing to be segmented with an exterior trim applied for circular resemblance.
 - 6. Channel glass to be Bendheim system, 70% Lamberts Linit P23/60/17 (9-1/8” wide) profiles in 504 rough cast and 30% Clarissimo textures with low E coating on one channel in double glazed exterior applications. Aluminum framing to be BWS SF60 system, thermally broken.

7. Exterior guardrail to be CRL P7 42" posts, glass fittings, and anchors, glazed with ½" clear tempered laminated glass with polished edges. Includes straight and segmented guardrail in 4' sections where shown as circular.

B. Excludes

1. Fire rated glass
2. Door lites
3. Bendheim Channel glass system at interior circular stair between level 1 to 2 and level 2 to 3; included as metal framed/drywall partition
4. Storefront and Curtain Wall Water Testing per ASTM E311, AAMA 501.1 & 1105.
5. Interior coiling doors
6. Glass film
7. Elevator smoke doors

Section 09250 – Drywall and Metal Framing

A. Includes

1. Exterior metal stud framing per structural drawings with max gauge at 16 gauge.
2. Exterior glass mat sheathing
3. Engineered shop drawings for cold formed framing members/assemblies
4. 2x6 FRT wood blocking at parapet caps
5. 5/8" FRT plywood at underside of framing at soffits receiving T&G soffit materials
6. Interior light gauge metal wall framing assumed to be 20 gauge
7. 1-5/8" stud framed ceilings receiving direct applied tectum panels
8. Suspended single layer drywall ceilings at hard lid gypboard locations in restrooms
9. 1-hour shaftwall assemblies for one 10' x 10' shaftwall per level
10. 150 LF of 6" x 18-gauge flat strap blocking for accessories
11. Single layer 5/8" type X gypsum drywall with 2 layers at inside face of 1-hour wall locations shown in VE document indicating Type 2B construction
12. Moisture resistant gypsum board at wet wall areas
13. 5/8" denshield tile backer to 8' AFF at restrooms / locker rooms / showers
14. Level 5 finish at all exposed drywall surfaces
15. 3-sided drywall returns at windows
16. Acoustic sealant and insulation in deck flutes at full height walls
17. Fire tape only at all surfaces that are not exposed
18. Corner bead
19. USG or Armstrong acoustical ceilings systems as indicated at locations shown in Exhibit J – assumed to be 2' x 2' ceiling tile with 15/16" white ceiling grid
20. 1" tectum panels with beveled edge at locations shown in Exhibit J and included in Allowance Item #26
21. 9Wood 1100 Series wood grilles at locations shown in Exhibit J and included in Allowance Item #26
22. 15/16" black suspension system for 9Wood 1100 Series wood grilles
23. 9Wood Linear wood ceilings at locations shown in Exhibit J and included in Allowance Item #26

B. Excludes

1. Shop Drawings and/or engineering for interior metal stud framing
2. Impact or abuse resistant drywall
3. Metal strapping or wood blocking other than indicated above
4. Drywall reveal metal or expansion joints
5. Acoustic sound wall panels

6. High performance coatings
7. Writable wall paint
8. Wall covering

Section 09600 – Flooring and Tile (Part of Interiors Allowance #26)

A. Includes

1. 5,107 square feet of ceramic wall tile at restrooms, locker rooms, showers
 - a. Includes material allowance of \$6.50/sf; tile, transitions, trim, freight, handling, subcontractor markup
2. 1,511 square feet of ceramic floor tile at restrooms, locker rooms, showers
 - a. Includes material allowance of \$4.00/sf
3. 1,778 square feet of LVT flooring at copy rooms and break room
 - a. Includes material allowance of \$4.00/sf
4. 2,700 lineal feet of standard 4” rubber base
5. 2,789 square yards of carpet tile; direct glue applied
 - a. Includes materials allowance of \$35/sy
6. 25 square yards of walk off carpet
 - a. Includes materials allowance of \$55/sy

B. Excludes

1. Epoxy tile grout
2. Recessed walk off carpet
3. Polished concrete

Section 10000 – Specialties (Part of Interiors Allowance #26)

A. Includes

1. 24 total restroom partitions and 4 total urinal partitions; plastic laminate finish
2. Exterior signage allowance of \$5,000
3. Monument sign allowance of \$15,000
4. Interior code minimum signage allowance of \$18,500
5. Metal lockers and benches allowance of \$10,000
6. 6 recessed fire extinguisher cabinets with 10 lb. Fire extinguisher
7. Restroom accessories allowance for 8 rooms at \$5,000 each
8. Shower accessories allowance for 2 rooms at \$2,500 each

B. Excludes

1. Marker boards
2. Postal specialties
3. Corner guards
4. Flagpoles
5. Directories or plaques

Section 11000 – Equipment (Part of Interiors Allowance #26)

A. Includes

1. Break room appliance allowance for 1 room of \$5,000

B. Excludes

1. Trash compactors
2. Parking equipment
3. Window washing equipment

Section 12000 – Furnishings (Part of Interiors Allowance #26)

A. Includes

1. 1,000 sf of manual single shade window coverings at \$22/sf

B. Excludes

1. Cubicles nor moveable partitions
2. High density operable storage shelving

Section 13610 – Solar Collectors

A. Includes

1. 30.10 kW system
2. 86 Hyundai Mon-crystalline HiS-S350RI (350 watt) panels
3. 86 Enphase IQ 7+ Microinverters
4. Unirac RoofMount RMDT racking system
5. Internet Monitoring
6. 25-year warranty on Enphase Microinverter and Unirac RoofMount RMDT racking system
7. Hyundai Solar 10 year for 90% of warranted minimum power and 25 year for 80% of warranted minimum power

B. Excludes

1. Integration to any building automation systems
2. Additional framing or supports for the solar panels

Section 14240 – Elevators

A. Includes

1. 4-stop Otis Gen2 for building elevator

Designation & Model	Otis Gen2™ Elevator System	
Capacity and Speed	3500 lbs Passenger @ 150 fpm	
Stops, Floors & Rise	4 Stops- 4 Front Openings With 43 ft 2 in 0 Of Rise	
Clear Car Inside Dimensions	6 ft 6 in 3/4 wide x 5 ft 6 in 1/8 deep	
Clear Hoistway	8 ft 6 in 0 wide x 6 ft 11 in 0 deep	
Clear Overhead & Pit Depth	Overhead- 12 ft 10 in 0 Pit- 4 ft 0 in 0	
Door Type / Size	Center Opening- 42 in wide x 84 in high	
Control Space	Machine Roomless	
Operation	Simplex	
Power Supply	208 or 480 Volts, Three Phase AC, 60 Hertz	
Cab Enclosure	Otis laminated steel cab shell, Cab Height: 93 in. Brushed stainless steel standard return, header and car door Standard painted flat canopy with 4 LED down lights Brushed stainless steel, round bar, side and rear handrails	
Cab Flooring	Furnished and installed by others	
Hoistway Entrance Finish(s)	Baked enamel entrances at front landings-LL,1,2,3 Aluminum sills at front landings- LL,1,2,3	
Signals	Brushed stainless steel standard car operating panel including round buttons with blue illuminating halos Hall fixtures, with flat metal brushed stainless steel faceplates, mounted in entrance jambface and brushed stainless steel flat buttons	
Constant Features	Access at top and bottom landing with zoning Firefighters' Service Phase I and Phase II Handicapped and braille markings Optiguard® door reversal device In car lantern Otis ADA hands free phone Emergency car lighting	
Code Compliance	All applicable local, state and national codes Seismic Zone 0/1 (non-seismic)	ANSI A17.1, Aspen, Colorado local code and A.D.A.
Maintenance	3 months after acceptance of elevator by owner including emergency callback service during normal working hours.	

2. 3-stop Otis HydroFit for plaza elevator

Designation & Model	Otis HydroFit™ Elevator System	
Capacity and Speed	3500 lbs Passenger @ 125 fpm	
Stops, Floors & Rise	3 Stops- 1 Front Opening With 2 Rear Openings With 25 ft 0 in 0 Of Rise	
Clear Car Inside Dimensions	6 ft 6 in 3/4 wide x 5 ft 6 in 1/8 deep	
Clear Hoistway	8 ft 6 in 0 wide x 7 ft 5 in 1/4 deep	
Clear Overhead & Pit Depth	Overhead- 12 ft 10 in 0 Pit- 5 ft 0 in 0	
Door Type / Size	Center Opening- 42 in wide x 84 in high	
Control Space	Machine Roomless- tank and controller in hoistway pit. 3' x 7' access door on side wall of hoistway at lowest floor served by others.	
Operation	Simplex	
Power Supply	208 or 480 Volts, Three Phase AC, 60 Hertz	
Cab Enclosure	Otis laminated steel cab shell, Cab Height: 93 in. Brushed stainless steel standard return, header and car door Standard painted flat canopy with 4 LED down lights Brushed stainless steel, round bar, side handrails	
Cab Flooring	Furnished and installed by others	
Hoistway Entrance Finish(s)	Baked enamel entrances at front landings-1 Baked enamel entrances at rear landings-2,3 Aluminum sills at front landings- 1 Aluminum sills at rear landings- 2,3	
Signals	Brushed stainless steel standard car operating panel including round buttons with blue illuminating halos Hall fixtures, with flat metal brushed stainless steel faceplates, mounted in entrance jambface and brushed stainless steel flat buttons	
Constant Features	Access at top and bottom landing with zoning Firefighters' Service Phase I and Phase II Handicapped and braille markings Optiguard® door reversal device In car lantern Otis ADA hands free phone Emergency car lighting	
Additional Features	Independent service	
Code Compliance	All applicable local, state and national codes Seismic Zone 0	ANSI A17.1, Aspen, Colorado local code and A.D.A.
Maintenance	3 months after acceptance of elevator by owner including emergency callback service during normal working hours.	

B. Excludes

1. Battery return units
2. Connections to generator

3. Traveling cable

Section 15100 – Plumbing & HVAC

A. Includes

1. Underground waste and vent to be PVC/DWV; above ground to be cast iron
2. Domestic water piping to be Aquatherm and PEX tubing
3. Commercial water heater with recirc pump and piping
4. Sump pumps for elevators
5. Exterior wall hydrants
6. Fixtures, faucets and drains per schedule on P5.01
7. Hydronic piping system includes piping from geothermal sump to new mechanical room
 - a. Piping to be Aquatherm for piping 2” and larger and PEX for tubing 1.5” and smaller
8. Snowmelt piping per zone layout on M1.01 and M1.02
9. Rework existing snowmelt piping at bank for new sidewalk
10. Snowmelt schedule on M8.02
11. Domestic water and hydronic piping insulation
12. Mini split refrigerated systems for IT and Data Room cooling
13. Generator exhaust with fire wrap and ceramic liner
14. DDC control

B. Excludes

1. Removal of existing sump basin in existing garage
2. APC in rack cooling for IT and Data Room equipment
3. DDC Echo Screen dashboard
4. DDC energy monitoring
5. PVC jacketing on exposed pipe insulation

Section 15300 – Fire Protection

A. Includes

1. System design is based upon NFPA 13 standards
2. 1 zone per floor
3. Steel pipe
4. Exposed piping with upright sprinklers in basement
5. Concealed piping and sprinklers main through upper level
6. Exposed piping and sprinklers at Tectum ceilings
7. Dry type sprinklers at overhangs

B. Exclusions

1. Fire pump(s)
2. Clean agent system in IT/Data Rooms
3. Seismic protection
4. Coverage in existing garage
5. Freeze protection
6. Holding/water storage tanks

Section 16010 – Electrical

A. Includes

1. Fire alarm system

2. 4000-amp electrical service
3. 80 kW gas genset
4. LV conduit similar to APD
5. Window blinds power at Top Level only
6. 2 – 15kW UPS floor standing units for Data Room
7. It is assumed owner supplied/installed cubicles/moveable partitions will come self-contained with power/LV boxes for Shaw to be able to make final connection.

B. Exclusions

1. Lightning protection
2. Temporary generator docking station
3. Fire alarm integration for existing parking garage
4. Data center equipment and racks – assumed to be furnished and installed by others
5. WiFi and cellular signal booster systems.
6. DAS system – both public and cellular.

Section 18000 – Allowances

A. Includes

1. Primary Electrical Wire & Terminate; \$75,978
 - a. Furnish and install 25KV, 500AWG, jacketed cable at Rio Grande Place splice vault south to new splice vault approximately 505 LF between vaults.
 - b. Furnish and install 25KV, 500AWG splices on existing 500AWG cable in vault in island of Rio Grande and in new vault South of island vault (QTY. of 9 splices) We will have to splice the 500AWG cable in the island twice due to phasing of project.
 - c. Furnish and install 25KV, 500AWG, jacketed cable between new switch gear vault to existing vault in sidewalk near Puppy Smith Street approximately 10 LF.
 - d. Install 25KV, 500AWG splices in existing vault at Puppy Mill Street to new 500AWG that is pulled in to the new vault sitting next to this existing vault (Quantity of 3)
 - e. Furnish and install 25KV, 1/0AWG, Okonite cable between existing vault that is being made a splice vault in the island of Rio Grande to the new switch vault North down Mill Street 415LF.
 - f. Furnish and install 500AWG, 25KV terminations (Quantity of 6) on cable in new switch gear vault at Puppy Mill Street and 1/0, 25KV terminations (Quantity of 3).
2. Subsurface Unknowns During Excavation; \$50,000
 - a. Rock blasting, rock removal (greater than 2 CY), unsuitable soils, hazardous materials, etc.
3. Adjacent Building Monitoring; \$10,000
 - a. Ongoing monitoring costs of Rio Grande Building, Pitkin County Library, Mill Street Condos, Bank Building and existing parking garage structure
4. Bike Ramp and Tread Nosings at Grand Stair; \$15,000
 - a. This allowance is for a cast-in-place bike ramp and metal tread nosings, similar to APD grand stair
5. Precast Beam and Brick Removal: \$114,000
 - a. This allowance is for the work associated with removing, cutting and removal of the existing precast beams and brick, not detailed in the demolition drawing set
6. Structured Cabling: \$96,500

- a. Allowance includes costs for vertical and horizontal cabling and fit out of the main data room and (2) IDF rooms per Exhibit E.
7. Landscape Irrigation - Install and Materials, Design by others: \$40,000
 - a. Design is assumed to be completed and issued by landscaping designer per updated COA engineering requirements/standards
8. Radon Vent System; \$40,000
 - a. This is allowance is for the design build costs of a passive, under slab radon vent system
9. PV Disconnect and Metering; \$10,000
10. UPS System – 30kW: \$70,000
 - a. (2) 15 kW floor standing units for the data room
11. Lobby Radius Stair Treads and Railing: \$100,000
12. Geothermal Concrete Basin: \$150,000
 - a. Demo, excavation, installation, backfill, coatings, access/ladder
13. Weather Conditions, snow removal, temp heating, concrete additives, etc: \$150,000
14. Mock Ups: \$15,000
15. Neighbor Outreach: \$10,000
16. LEED Dynamic Plaque: \$6,000
17. A/V System: \$90,000
 - a. Allowance includes empty conduit per locations shown on Exhibit F, equipment, wiring and install.
18. Access Control / CCTV: \$152,000
 - a. Access Control - Includes card readers and door hardware for (38) door locations as shown in Exhibit F
 - b. CCTV - Includes conduit and one Cat6 cable to (12) different CCTV locations as shown in Exhibit F
19. Repair Existing Building Waterproofing: \$15,500
 - a. For use after exposing any adjacent building/structure waterproofing due to excavation and/or exploration
20. Waterproofing and Topping Slab at Parking Structure Above Occupied Space: \$51,000
21. Intumescent Paint/2 Hour Drywall Wrap and Draft Curtains at Atrium: \$100,000
22. Underpinning for Foundation Excavation at SW Corner: \$50,000
23. Public Communication Services: \$54,725
 - a. Remaining contract value for PR Studio
24. Traffic Control: \$50,000
25. Expansion Joints and Waterproofing Tie In to Existing Structures; \$15,000
26. ACO Interiors: \$2,520,486
 - a. See Exhibit K – Interiors estimate for scope included

Value Engineering

For pricing of VE items see BSL

GENERAL EXCLUSIONS

- A. Permits and Plan Review Fees, development fees, land lease fees, right-of-way fees, impact fees
 - a. Assume 50% permit fee waivers for MEFP trades

- B. Any sales and use tax
- C. Cost for 3rd party inspections
- D. Davis Bacon wages
- E. Costs for LEED Certification
- F. All furniture, fixtures and equipment (FF&E), including modular wall systems
- G. Architectural and owner intent
- H. Costs for changes required by Building Department code review or other jurisdictions having authority

We look forward to working with you on this project.

Sincerely,

Jamie Neyers
SHAW CONSTRUCTION

CC: Sam Meyer – Shaw Construction
Brian Thomas – Shaw Construction



Aspen City Offices
Permit Drawings / 50% CD Set
ACO Build Back GMP

Project name ACO Build Back
425 Rio Grande Place
Aspen
CO 81611

Estimator JN

Labor rate table 1

Job size 36875 sf

Duration 17 mo

Bid date 1/26/2019

Report format Sorted by 'Group phase/Phase'
'Detail' summary
Allocate addons
Print sort level notes



Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
001000		GENERAL CONDITIONS*				
	001005	GENERAL CONDITIONS				
		Shaw City Offices GC's	17.00 mo	122,104.59 /mo	2,075,778	
		GENERAL CONDITIONS	36,875.00 sf	56.29 /sf	2,075,778	
		GENERAL CONDITIONS*	36,875.00 sf	56.29 /sf	2,075,778	
002000		SITWORK*				
	002050	SITWORK SUPPORT				
		<i>Potholing Allowance - w/ Utilities</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Traffic Control - SEE ALLOWANCES</i>	<i>* AL</i>	<i>0.00 /AL</i>	<i>0</i>	
		<i>Acoustic Services - Utilities</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		Acoustic Real Time Monitoring	20.00 week	2,300.00 /week	46,000	
		<i>Sound Barrier Mitigation during Shoring Operations - SEE ALLOWANCES</i>	<i>* AL</i>	<i>0.00 /AL</i>	<i>0</i>	
		Street Cleaning	12.00 mo	1,500.00 /mo	18,000	
		Boom Lift - 1 Ea for Duration	17.00 mo	3,025.00 /mo	51,425	
		Scissor Lift - 2 Ea for 6 Months	12.00 mo	1,166.00 /mo	13,992	
		Construction Temp Fencing	1,000.00 lf	10.94 /lf	10,937	
		Safety Scaffolding at Garage Entrance	12.00 mo	4,009.83 /mo	48,118	
		Carpenter Foreman	3,120.00 hr	43.02 /hr	134,207	
		Clean Up - Avg 2 Men for 2 Days per Week	2,500.00 hr	30.85 /hr	77,131	
		Construction Surveying	40,000.00 sf	1.25 /sf	50,000	
		Generator	6.00 mo	2,000.00 /mo	12,000	
		Signage and Barricades	17.00 mo	250.00 /mo	4,250	
		Dumpsters	17.00 mo	5,000.00 /mo	85,000	
		SITWORK SUPPORT	36,875.00 sf	14.94 /sf	551,060	
	002110	HAZARDOUS SOIL REMOVAL				
		<i>Hazardous Soil Removal</i>	<i>* ex</i>	<i>0.00 /ex</i>	<i>0 by Owner if required</i>	
	002220	SITE DEMOLITION				
		Demo in Existing Parking Garage for New Footings	867.00 sf	33.15 /sf	28,739 Stutsman	
		Demo Existing/Temp Asphalt	17,623.00 sf	0.93 /sf	16,394 Stutsman	
		Demo Concrete Paving, Sidewalks, C&G, etc.	489.00 ton	135.74 /ton	66,377 Stutsman	
		Demo Green Space at Galena Plaza	1.00 ls	150,779.00 /ls	150,779 Stutsman	
		Remove Trees	17.00 ea	266.08 /ea	4,523 Stutsman	
		<i>Saw Cut Asphalt</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Saw Cut Concrete</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		Tree Protection	3.00 ea	500.00 /ea	1,500	
		Taster Demo - Terrace, Stairs, Trash, Walls, Drywell	1.00 ls	17,724.59 /ls	17,725 Stutsman	
		SITE DEMOLITION	36,875.00 sf	7.76 /sf	286,036	
	002240	DEWATERING				
		<i>Dewater Excavations</i>	<i>* ex</i>	<i>0.00 /ex</i>	<i>0</i>	
	002250	SHORING & UNDERPINNING				
		<i>Shoring System for Excavation - SEE ALLOWANCES</i>	<i>* AL</i>	<i>0.00 /AL</i>	<i>0</i>	
	002260	EXCAVATION SUPPORT				
		Earthwork Contractor GC's	1.00 ls	52,300.00 /ls	52,300 Stutsman	
		EXCAVATION SUPPORT	36,875.00 sf	1.42 /sf	52,300	
	002315	EXCAVATION & FILL				
		Geofoam at Stair Void	1.00 ls	63,294.00 /ls	63,294 Stutsman	
		Excavation - Site Walls	327.00 cy	31.09 /cy	10,165 Stutsman	
		Excavation - Timeline Walls	202.00 cy	34.46 /cy	6,960 Stutsman	
		Excavation - for Micro Pile Drill Rig at Grand Stair / Elevator	61.00 cy	53.25 /cy	3,248 Stutsman	
		Excavation - Grand Stair	164.00 cy	37.04 /cy	6,075 Stutsman	
		Excavation - Plaza Elevator	336.00 cy	63.27 /cy	21,260 Stutsman	
		Backfill - Site Walls	295.00 cy	64.85 /cy	19,131 Stutsman	



Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
002315	EXCAVATION & FILL					
		Backfill - Timeline Walls	151.00 cy	60.35 /cy	9,113	Stutsman
		Backfill - Grand Stairs	214.00 cy	71.53 /cy	15,308	Stutsman
		Backfill - Plaza Elevator	210.00 cy	72.75 /cy	15,278	Stutsman
		Excavation - Tasters Site Walls	206.00 cy	34.98 /cy	7,205	Stutsman
		Backfill - Tasters Site Walls	167.00 cy	61.03 /cy	10,192	Stutsman
		EXCAVATION & FILL	36,875.00 sf	5.08 /sf	187,229	
002320	BUILDING EXCAVATION					
		Excavate Basement - Export of All Spoils	5,975.00 cy	39.83 /cy	237,985	Stutsman
		Excavation for Pads in Garage	60.00 cy	109.58 /cy	6,575	Stutsman
		Backfill Basement Walls - Import	943.00 cy	59.60 /cy	56,200	Stutsman
		Backfill for Slabs - Import	8,787.00 sf	16.49 /sf	144,929	Stutsman
		Hand Excavate	80.00 hr	30.85 /hr	2,468	
		Hand Compaction	80.00 hr	40.85 /hr	3,268	
		BUILDING EXCAVATION	36,875.00 sf	12.24 /sf	451,425	
002370	EROSION CONTROL					
		Vehicle Tracking Pad	2.00 ea	3,227.80 /ea	6,456	Stutsman
		BMP's	1.00 ls	2,944.00 /ls	2,944	Stutsman
		Concrete Washout	1.00 ls	2,500.00 /ls	2,500	
		EROSION CONTROL	36,875.00 sf	0.32 /sf	11,900	
002470	SPECIAL FOUNDATIONS					
		Micropiles at Grand Stair Case	44.00 ea	1,500.00 /ea	66,000	
		SPECIAL FOUNDATIONS	36,875.00 sf	1.79 /sf	66,000	
002505	SITE UTILITIES					
		6" DIP Garage Water Service	1.00 ls	5,291.00 /ls	5,291	Stutsman
		Water Service to Building	1.00 ls	4,168.00 /ls	4,168	Stutsman
		SITE UTILITIES	42,550.00 sf	0.22 /sf	9,459	
002550	PIPED ENERGY DISTRIBUTION					
		Gas Service Trenching	134.00 lf	66.14 /lf	8,863	Stutsman
		PIPED ENERGY DISTRIBUTION	36,875.00 sf	0.24 /sf	8,863	
002580	SITE ELECTRICAL					
		Landscape / Site Lighting	40,000.00 sf	1.63 /sf	65,200	
		Fiber Optic - Trench, Conduits, Backfill	318.00 lf	56.10 /lf	17,841	Stutsman
		Electric - Trench, Conduits, Backfill	276.00 lf	76.60 /lf	21,141	Stutsman
		CATV - Trench, Conduits, Backfill	242.00 lf	69.60 /lf	16,844	Stutsman
		Telephone - Trench, Conduits, Backfill	130.00 lf	66.43 /lf	8,635	Stutsman
		Primary Cable Pull from Library Transformer to Switchgear	250.00 lf	200.00 /lf	50,000	
		SITE ELECTRICAL	36,875.00 sf	4.87 /sf	179,661	
002620	SUBSURFACE DRAINAGE					
		4" Perf. PVC Pipe Wall Drains	160.00 lf	39.80 /lf	6,368	Stutsman
		4" Perf. PVC Pipe Wall Drains at Tasters	160.00 lf	45.29 /lf	7,246	Stutsman
		4" Perf. PVC Pipe Foundation Drain	450.00 lf	38.90 /lf	17,503	Stutsman
		SUBSURFACE DRAINAGE	36,875.00 sf	0.84 /sf	31,117	
002630	STORM DRAINAGE					
		Bio Retention Pond and Drainage	1.00 ls	36,707.00 /ls	36,707	Stutsman
		Remove Temp Drainage	1.00 ls	7,299.08 /ls	7,299	Stutsman
		Bio Retention Pond and Drainage Adjacent to Tasters	1.00 ls	20,316.91 /ls	20,317	Stutsman
		Manholes - New	3.00 ea	7,245.43 /ea	21,736	Stutsman
		Manholes - R&R	1.00 ea	9,475.20 /ea	9,475	Stutsman
		5' Dia x 12' Drywell	1.00 ea	10,159.20 /ea	10,159	Stutsman
		Storm Sewer	422.00 lf	165.34 /lf	69,775	Stutsman
		Storm Sewer at Tasters	98.00 lf	94.90 /lf	9,300	Stutsman
		STORM DRAINAGE	36,875.00 sf	5.01 /sf	184,768	
002720	BASE COURSES					
		Prep and Base for Asphalt Parking Lot	11,360.00 sf	4.30 /sf	48,839	Stutsman
		Prep and Base for Sidewalks, Stairs, Snowmelt, etc.	13,215.00 sf	4.16 /sf	54,959	Stutsman
		Prep and Base for Flatwork at Tasters	1,890.00 sf	3.95 /sf	7,457	Stutsman



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Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
		BASE COURSES	36,875.00 sf	3.02 /sf	111,255	
002740	ASPHALT PAVING					
		4" Asphalt Paving	11,360.00 sf	3.37 /sf	38,275	Stutsman
		Parking Lot Striping	1.00 ls	985.00 /ls	985	Stutsman
		ASPHALT PAVING	36,875.00 sf	1.07 /sf	39,260	
002750	CONCRETE PAVING					
		Conc Paving - 4" Sidewalk	7,694.00 sf	5.50 /sf	42,317	RMS
		Conc Paving - 8" Paving	1,750.00 sf	9.71 /sf	17,000	RMS
		Conc Paving - Trash Pad	189.00 sf	10.00 /sf	1,890	
		Conc Paving - 5" Sidewalk at Bank	828.00 sf	9.48 /sf	7,845	RMS
		Curb & Gutter	621.00 lf	25.00 /lf	15,525	RMS
		HC Ramps	2.00 ea	700.00 /ea	1,400	RMS
		Stair on Grade (Street Entry)	191.00 sf	40.00 /sf	7,640	
		Concrete Pumping	1.00 ls	15,000.53 /ls	15,001	RMS
		Layout	30,000.00 sf	0.53 /sf	15,888	
		CONCRETE PAVING	36,875.00 sf	3.38 /sf	124,505	
002780	UNIT PAVERS					
		Plaza Pavers including Sand Base	* ex	0.00 /ex	0	
		4" Exposed Aggregate Paving ILO Pavers	8,243.00 sf	16.50 /sf	136,010	RMS
		Concrete Band at Paver Edge	709.00 lf	35.00 /lf	24,815	RMS
		4" Gravel Base Under Concrete	675.00 sy	64.00 /sy	43,200	
		Add'1 12" Gravel at Existing Garage for Elevation Change	* ex	0.00 /ex	0	
		UNIT PAVERS	36,875.00 sf	5.53 /sf	204,025	
002870	SITE FURNISHINGS					
		Site Furnishings	* ex	0.00 /ex	0	
002905	LANDSCAPE SUBCONTRACT					
		Landscaping - Topsoil/Growing Media, Trees, Plants, Perennials	1.00 ls	400,118.12 /ls	400,118	Twisted Tree
		Irrigation - SEE ALLOWANCES	* AL	0.00 /AL	0	
		- perforated drain pipe at Plaza	500.00 lf	22.00 /lf	11,000	
		Add'1 12" of Topsoil at Existing Garage Lid (14,400 SF x 12")	* ex	0.00 /ex	0	
		Add'1 18" (average) Topsoil at "Mounds" (20,000 SF x 18")	* ex	0.00 /ex	0	
		Fine Grade & Soil Prep for Landscaping	19,923.00 sf	0.72 /sf	14,348	
		GardenDrain and Filter Fabric at New	5,549.00 sf	5.00 /sf	27,745	
		Waterproofing for Landscape/Irrigation				
		GardenDrain and Filter Fabric at Exist.	14,374.00 sf	5.00 /sf	71,870	
		Waterproofing for Landscape/Irrigation				
		LANDSCAPE SUBCONTRACT	36,875.00 sf	14.24 /sf	525,081	
002995	SITE CONCRETE					
		New Stairs - Wall and Footing	83.00 cy	585.00 /cy	48,555	RMS
		New Stairs - 6" Steps and Landing on Grade	829.00 sf	31.72 /sf	26,299	RMS
		Exterior Elevator Pit and Walls	10.00 cy	570.00 /cy	5,700	
		Tasters Walls	35.00 cy	550.00 /cy	19,250	RMS
		Timeline Walls	48.00 cy	550.00 /cy	26,400	RMS
		Timeline Entry Walk - Exposed Aggregate	1,039.00 sf	16.50 /sf	17,143	RMS
		Galena Plaza Wall (East Side)	12.00 cy	550.00 /cy	6,600	
		Galena Plaza Landscape Limit Wall (South Side)	20.00 cy	570.00 /cy	11,400	
		Layout	1,000.00 sf	0.23 /sf	230	
		SITE CONCRETE	36,875.00 sf	4.38 /sf	161,577	
		SITWORK*	36,875.00 sf	86.39 /sf	3,185,520	
003000	CONCRETE*					
003310	CAST-IN-PLACE CONCRETE					
		Concrete Footings and Walls	514.00 cy	600.08 /cy	308,440	RMS



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003310		CAST-IN-PLACE CONCRETE				
		Drill and Epoxy New Footings in Parking Structure	335.00 ea	38.00 /ea	12,730 RMS	
		Elevator Pit and Slab	<i>* incl</i>	0.00 /incl	0	
		Pit Sumps	<i>* incl</i>	0.00 /incl	0	
		Revised VE Basement Walls	<i>* incl</i>	0.00 /incl	0	
		Columns Protectors	31.00 ea	440.32 /ea	13,650 RMS	
		4" Slab On Grade - Basement	3,500.00 sf	5.84 /sf	20,447 RMS	
		4" Slab On Grade - Main Level	4,690.00 sf	5.84 /sf	27,398 RMS	
		Topping Slab on Metal Deck - Main Level	4,000.00 sf	6.51 /sf	26,019 RMS	
		Topping Slab on Metal Deck - 2nd Level	12,536.00 sf	6.58 /sf	82,439 RMS	
		Topping Slab on Metal Deck - 3rd Level and Curb Wall	16,698.00 sf	9.17 /sf	153,167 RMS	
		Topping Slab on 3rd Level Deck Outside Large Meeting Room (NW Corner)	2,435.00 sf	6.81 /sf	16,569	
		Equipment Pads - sf	250.00 sf	13.20 /sf	3,300	
		Concrete Hoisting Equip. Layout	5.00 mo	6,000.00 /mo	30,000	
			36,875.00 sf	0.53 /sf	19,528	
		CAST-IN-PLACE CONCRETE	36,875.00 sf	19.35 /sf	713,687	
CONCRETE*			36,875.00 sf	19.35 /sf	713,687	
004000		MASONRY*				
004220		CONCRETE MASONRY UNITS				
		8" CMU Block Shaft Wall at Plaza Elevator	3.00 flt	19,223.00 /flt	57,669 Gallegos	
		8" CMU Block Shaft Wall at Building Elevator	4.00 flt	19,973.00 /flt	79,892 Gallegos	
		8" CMU Block Wall at West Stair	2.00 flt	19,223.00 /flt	38,446 Gallegos	
		CONCRETE MASONRY UNITS	36,875.00 sf	4.77 /sf	176,007	
004410		STONE MASONRY				
		Stone Veneer - San Miguel Santa Fe blend	4,700.00 sf	51.91 /sf	243,972 Gallegos	
		Temp Enclosure Allowance	4,700.00 sf	1.38 /sf	6,503	
		Temp Heating Allowance	6.00 wk	1,162.86 /wk	6,977	
		STONE MASONRY	36,875.00 sf	6.98 /sf	257,452	
MASONRY*			36,875.00 sf	11.76 /sf	433,459	
005000		METALS				
005120		STRUCTURAL STEEL				
		1st Floor Structural Steel	19.36 tn	5,043.25 /tn	97,637 RMSI	
		2nd Floor Structural Steel	40.39 tn	5,043.20 /tn	203,695	
		3rd Floor Structural Steel	78.87 tn	5,603.57 /tn	441,953	
		Roof Structural Steel	31.59 tn	5,603.57 /tn	177,017	
		Steel Columns / Bracing	52.05 tn	5,043.22 /tn	262,499	
		Traffic Control	150.00 hr	31.94 /hr	4,791	
		STRUCTURAL STEEL	36,875.00 sf	32.21 /sf	1,187,593	
005310		METAL DECK				
		1st Floor Metal Floor Deck and Slab Edge	7,857.00 sf	5.38 /sf	42,252	
		2nd Floor Metal Floor Deck and Slab Edge	12,380.00 sf	5.38 /sf	66,576	
		3rd Floor Metal Floor Deck and Slab Edge	16,595.00 sf	5.38 /sf	89,243	
		Metal Roof Deck	8,000.00 sf	5.38 /sf	43,021	
		METAL DECK	36,875.00 sf	6.54 /sf	241,092	
005510		MISC. METALS				
		Handrail Type 1 at Entry Stair [Detail 1/L7-09]	14.00 lf	75.00 /lf	1,050 at Main Level Entry	
		Handrail Type 1 at Grand Stair [Detail 1/L7-08]	120.00 lf	75.00 /lf	9,000 at Main Level Entry	
		Handrail Type 1 at Ramp [Detail 1/L7-07]	40.00 lf	75.00 /lf	3,000 at Main Level Entry	
		Handrail Type 1 at Small Stair [Detail 1/L7-07]	14.00 lf	75.00 /lf	1,050 at Main Level Entry	
		Fence Type 1 at Ramp [Detail 1/L7-05] - No details provided	13.00 lf	35.00 /lf	455 at Ramp	
		Gate Type 1 at Ramp [Detail 3/L7-05] - No details provided	1.00 ea	2,500.00 /ea	2,500 at Ramp	
		Misc. Metals Allowance	36,875.00 sf	1.00 /sf	36,875	
		Handrails at Middle Level Corridor near Plaza Elevator [sheet A2.12]	43.00 lf	225.00 /lf	9,675 at Corridor near Plaza Elevator	



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005510	MISC. METALS					
		Guardrail w/ Handrail at Middle Level of Parking Garage [sheet A2.11]	45.00 lf	35.00 /lf	1,575	at Steps / Ramp at Middle Level of Parking Garage
		Ladders	1.00 ea	750.00 /ea	750	elevator pit ladders
		Bollards	4.00 ea	869.33 /ea	3,477	at Roll Up Door and Transformer
		Elevator Beams	1.00 ea	1,500.00 /ea	1,500	
		Sill Angles	24.00 lf	35.00 /lf	840	
		Cable Safety Rail and Toeboard	1,000.00 lf	15.00 /lf	15,000	
		Access Ladders	45.00 lf	75.00 /lf	3,375	Roof Access, 2 - Mech/Egress Well Access
		MISC. METALS	36,875.00 sf	2.44 /sf	90,122	
005530	GRATINGS					
		Steel Grating	251.00 sf	50.00 /sf	12,550	
		GRATINGS	36,875.00 sf	0.34 /sf	12,550	
METALS			36,875.00 sf	41.53 /sf	1,531,357	
006000	WOOD & PLASTICS*					
006105	ROUGH CARPENTRY					
		In Wall Blocking(Treated)	36,875.00 sf	0.86 /sf	31,685	
		2x6 Roof Parapet Coping Backing	1,000.00 lf	1.37 /lf	1,369	
		2x6 Curtainwall Parapet Coping Backing	325.00 lf	1.37 /lf	445	
		Rough Hardware	1.00 ls	1,500.00 /ls	1,500	
		ROUGH CARPENTRY	36,875.00 sf	0.95 /sf	34,999	
006165	SIDING					
		Prefinished Wood Soffits at Rio Entry - Material Only	1,046.00 sf	9.00 /sf	9,414	
		Prefinished Wood Soffits at Roof Overhang - Material Only	1,938.00 sf	9.00 /sf	17,442	
		SIDING	36,875.00 sf	0.73 /sf	26,856	
WOOD & PLASTICS*			36,875.00 sf	1.68 /sf	61,855	
007000	THERMAL/MOISTURE PROTEC'N*					
007120	WATERPROOFING					
		Hydrotech Horizontal Membrane Waterproofing	10,310.00 sf	13.00 /sf	134,030	
		- Temporary Protection	10,310.00 sf	3.69 /sf	38,013	
		- Repairs at Plaza Waterproofing	10,310.00 sf	0.25 /sf	2,578	
		- Repairs at Existing Plaza Waterproofing	17,856.00 sf	0.25 /sf	4,464	
		Water Test Horizontal Waterproofing	12.00 ea	486.47 /ea	5,838	
		- Re-test Waterproofing at Plaza	6.00 ea	486.47 /ea	2,919	
		Fluid-applied Vertical Waterproofing, Damproofing, R10 Rigid Insulation	1.00 ls	24,105.00 /ls	24,105	Accurate
		WATERPROOFING	36,875.00 sf	5.75 /sf	211,946	
007210	BUILDING INSULATION					
		2" Extrud. Polystyrene at Bank Snowmelt	1,171.00 sf	2.75 /sf	3,220	
		2" Extrud. Polystyrene at Entry Walk Snowmelt	1,040.00 sf	2.75 /sf	2,860	
		2" Extrud. Polystyrene at Site Elevator Walkway	415.00 sf	2.75 /sf	1,141	
		4" Extrud. Polystyrene at Plaza Snowmelted Concrete	2,220.00 sf	6.00 /sf	13,320	
		Building Insulation - Exterior Batt R21 and 1.5" Rigid Insulation	1.00 ls	60,086.00 /ls	60,086	Accurate
		Building Insulation - Upgrade Exterior to R24 w/ BIB System	* ex	0.00 /ex	0	
		Building Insulation - Horizontal 5.5" Thick Spray Insulation and R21 Batt	1.00 ls	87,631.00 /ls	87,631	Accurate
		Building Insulation - Interior R19/R11 Fiberglass Sound Batt	36,875.00 sf	0.75 /sf	27,656	
		Building Insulation - 1.5" Rigid Insulation at Plaza Elevator Core	1,376.00 sf	2.50 /sf	3,440	
		3.5" Polyiso installed to inside face of Basement Wall and CMU Wall at Level 1	1.00 ls	22,046.00 /ls	22,046	Accurate
		2" Extrud.Polystyrene at Basement and Main Level Slab	8,190.00 sf	2.75 /sf	22,522	RMS



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		BUILDING INSULATION	36,875.00 sf	6.62 /sf	243,923	
007220		ROOF/DECK INSULATION				
		<i>Rigid R40/R20 Roof Insulation Board</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0 w/ 007530</i>	
		<i>Tapered Insulation Board</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0 w/ 007530</i>	
		<i>1/2" HD Secure Board</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0 w/ 007530</i>	
007260		VAPOR RETARDERS				
		Spray Applied Vapor Permeable Weather Barrier at Plaza Elevator Skin	1,376.00 sf	3.50 /sf	4,816	
		Stegowrap Vapor Barrier	8,276.00 sf	1.50 /sf	12,414	Basement / Main Level SOG
		Spray Applied Vapor Permeable Weather Barrier at Metal Panels	1.00 ls	71,538.00 /ls	71,538	Accurate
		<i>Spray Applied Vapor Permeable Weather Barrier at Stone Veneer</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		VAPOR RETARDERS	36,875.00 sf	2.41 /sf	88,768	
007410		METAL ROOF/WALL PANELS				
		MTL-2 Metal Plate Wall Panels @ Plaza Elevator Skin	1,376.00 sf	32.50 /sf	44,720	
		MTL-1 Metal Plate Wall Panels: Rust Wall Panels	6,500.00 sf	32.50 /sf	211,250	The Roofing Company
		MTL-1 Metal Plate Wall Panels @ Backside of Upper Level Parapet Wall	214.00 sf	32.50 /sf	6,955	
		METAL ROOF/WALL PANELS	36,875.00 sf	7.13 /sf	262,925	
007530		ELASTOMERIC ROOFING				
		60 Mil EPDM Roofing Over Heated Space w/ R-40 Rigid Insulation	5,697.00 sf	25.00 /sf	142,425	The Roofing Company
		60 Mil EPDM Roofing Over Upper Level Canopy	1,899.00 sf	20.00 /sf	37,980	
		Premium for Extra Mil for Roofing at PV Areas	2,352.00 sf	2.50 /sf	5,880	
		Roof Anchor System	1.00 ls	3,000.00 /ls	3,000	
		ELASTOMERIC ROOFING	36,875.00 sf	5.13 /sf	189,285	
007620		FLASHING & SHEET METAL				
		Roof Coping [12" wide]	325.00 lf	30.00 /lf	9,750	
		Roof Coping [8" wide]	1,000.00 lf	30.00 /lf	30,000	
		Wall Flashing	36,875.00 sf	1.25 /sf	46,094	
		FLASHING & SHEET METAL	36,875.00 sf	2.33 /sf	85,844	
007720		ROOF ACCESSORIES				
		Roof Walkway Pads	334.00 lf	28.00 /lf	9,352	
		2'6"x4'6" Roof Hatch	1.00 ea	5,438.66 /ea	5,439	
		ROOF ACCESSORIES	36,875.00 sf	0.40 /sf	14,791	
007840		FIRESTOPPING				
		Hilti Firestopping System	36,875.00 sf	0.83 /sf	30,606	
		FIRESTOPPING	36,875.00 sf	0.83 /sf	30,606	
007920		JOINT SEALANTS				
		Site Sealants	36,875.00 sf	0.55 /sf	20,281	
		Exterior Bldg. Sealants	36,875.00 sf	0.25 /sf	9,219	
		Interior Sound Sealants	36,875.00 sf	0.15 /sf	5,531	
		JOINT SEALANTS	36,875.00 sf	0.95 /sf	35,031	
		THERMAL/MOISTURE PROTEC'N*	36,875.00 sf	31.54 /sf	1,163,119	
008000		DOORS & WINDOWS*				
008110		STEEL DOORS/FRAMES				
		Exterior Insulated Metal Door, Hollow Metal Frame, Hardware	7.00 ea	2,554.63 /ea	17,882	
		Unload & Distribute Frames	7.00 ea	18.28 /ea	128	
		Unload & Distribute Doors	7.00 ea	18.28 /ea	128	
		Unload & Distribute Hardware	7.00 ea	9.14 /ea	64	
		Temp Door Hardware	7.00 ea	177.42 /ea	1,242	
		STEEL DOORS/FRAMES	36,875.00 sf	0.53 /sf	19,444	



Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
008310		ACCESS DOORS				
		Access Doors - Std	1.00 ls	3,048.32 /ls	3,048	
		ACCESS DOORS	36,875.00 sf	0.08 /sf	3,048	
008330		COILING DOORS/GRILLS				
		Roll Up Door - 13' x 9' (Insulated)	117.00 sf	75.00 /sf	8,775	
		COILING DOORS/GRILLS	36,875.00 sf	0.24 /sf	8,775	
008410		STOREFRONT SYSTEMS				
		Exterior Alum Storefront - Based on U Value of 0.29	1.00 ls	391,722.00 /ls	391,722	Pinnacle
		Temporary Window Enclosures	2,500.00 sf	2.42 /sf	6,058	
		STOREFRONT SYSTEMS	36,875.00 sf	10.79 /sf	397,780	
008620		UNIT SKYLIGHTS				
		Skylight	1.00 ls	106,350.00 /ls	106,350	Pinnacle
		UNIT SKYLIGHTS	36,875.00 sf	2.88 /sf	106,350	
008910		CURTAINWALL SYSTEMS				
		Exterior Glass Railing	271.00 lf	620.66 /lf	168,200	Pinnacle
		Channel Glass Curtainwall System	1.00 ls	526,352.00 /ls	526,352	Pinnacle
		CURTAINWALL SYSTEMS	36,875.00 sf	18.84 /sf	694,552	
DOORS & WINDOWS*			36,875.00 sf	33.36 /sf	1,229,949	
009000		FINISHES*				
009220		PORTLAND CEMENT PLASTER				
		Stucco Soffit at Garage Entrance	1,739.00 sf	15.00 /sf	26,085	
		PORTLAND CEMENT PLASTER	36,875.00 sf	0.71 /sf	26,085	
009250		GYPSUM WALL BOARD				
		Metal Stud and Drywall	36,875.00 sf	30.12 /sf	1,110,688	SDI
		<i>Cement Backer Board at Stone</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Exterior Wall Framing / Drywall</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Interior Wall Framing / Drywall</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Interior Bathroom Wall System</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Interior Furred Out Wall System</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Gyp Bd Ceiling System</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Gyp Bd Soffits (Interior)</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Parapet Wall System</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Exterior Soffits</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		<i>Shaftwall System</i>	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		Hoisting for interior finishes	4.00 mo	6,000.00 /mo	24,000	
		Layout	346.00 hr	62.41 /hr	21,595	
		Touch-up	36,875.00 sf	0.15 /sf	5,531	
		Final Cleaning	* ex	0.00 /ex	0	GC's
		GYPSUM WALL BOARD	36,875.00 sf	31.51 /sf	1,161,814	
009980		CONC & MASONRY COATINGS				
		Sealed Conc. Floors	4,800.00 sf	1.00 /sf	4,800	
		Protect floors prior to Sealing	4,800.00 sf	0.37 /sf	1,785	
		CONC & MASONRY COATINGS	36,875.00 sf	0.18 /sf	6,585	
FINISHES*			36,875.00 sf	32.39 /sf	1,194,484	
010000		SPECIALTIES*				
010430		EXTERIOR SIGNAGE				
		Monument Sign	1.00 ea	15,000.00 /ea	15,000	
		Exterior Signage Allowance	1.00 ls	5,000.00 /ls	5,000	
		EXTERIOR SIGNAGE	36,875.00 sf	0.54 /sf	20,000	
010520		FIRE PROTECTION				
		Knox Box	2.00 ea	309.84 /ea	620	
		Fire Ext. & Cabinet (Recessed)	6.00 ea	231.50 /ea	1,389	
		FIRE PROTECTION	36,875.00 sf	0.05 /sf	2,009	



Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
013000		SPECIALTIES*	36,875.00 sf	0.60 /sf	22,009	
		SPECIAL CONSTRUCTION*				
	013610	SOLAR COLLECTORS				
		Rooftop PV System	30.00 kw	3,261.67 /kw	97,850	Atlasta
		SOLAR COLLECTORS	36,875.00 sf	2.65 /sf	97,850	
		SPECIAL CONSTRUCTION*	36,875.00 sf	2.65 /sf	97,850	
014000		CONVEYING SYSTEMS				
	014240	HYDRAULIC ELEVATORS				
		Hydraulic Elevators - 3 Floors	1.00 ls	94,071.42 /ls	94,071	Otis
		Temp Usage	30.00 day	100.00 /day	3,000	
		Temp Protection	1.00 ls	1,000.00 /ls	1,000	
		Reinspection	1.00 ea	4,500.00 /ea	4,500	
		Clean Down	1.00 ea	2,500.00 /ea	2,500	
		Conveyance Registration	1.00 ea	200.00 /ea	200	
		Hydraulic Elevators - 4 Floors	1.00 ls	125,428.56 /ls	125,429	Otis
		Temp Usage	30.00 day	100.00 /day	3,000	
		Temp Protection	1.00 ls	1,000.00 /ls	1,000	
		Reinspection	1.00 ea	4,500.00 /ea	4,500	
		Clean Down	1.00 ea	2,500.00 /ea	2,500	
		Conveyance Registration	1.00 ea	200.00 /ea	200	
		HYDRAULIC ELEVATORS	36,875.00 sf	6.56 /sf	241,900	
	CONVEYING SYSTEMS	36,875.00 sf	6.56 /sf	241,900		
015000		MECHANICAL*				
	015050	MECHANICAL				
		Mechanical / sf	36,875.00 sf	90.92 /sf	3,352,537	Falcon
		BIM Coordination - All Trades	* incl	0.00 /incl	0	
		IT Equipment Cooling System - Split System	* incl	0.00 /incl	0	
		Temperature Controls	* incl	0.00 /incl	0	
		MECHANICAL	36,875.00 sf	90.92 /sf	3,352,537	
	015100	PLUMBING				
		Snowmelt System at Bank (Reconfigure Piping at Existing)	1,171.00 sf	7.50 /sf	8,783	
		Snowmelt System at Entry Walk	1,040.00 sf	31.31 /sf	32,561	Falcon
	Snowmelt System at Basement Mech. and Egress Wells	269.00 sf	31.31 /sf	8,422	Falcon	
	Snowmelt System at Plaza Pavers	2,123.00 sf	31.31 /sf	66,468	Falcon	
	Snowmelt System at Grand Stairs	845.00 sf	31.31 /sf	26,455	Falcon	
	Snowmelt System at Site Elevator	415.00 sf	31.31 /sf	12,993	Falcon	
	Slot Drains Supply	* incl	0.00 /incl	0		
	"Roof" Drains	* incl	/incl			
	PLUMBING	36,875.00 sf	4.22 /sf	155,682		
015300	FIRE PROTECTION					
	Interior Sprinkler System	1.00 ls	146,000.00 /ls	146,000	Flame Out	
	Data Center Sprinkler System - Clean Agent	* ex	0.00 /ex	0		
	Fire Pump	* ex	0.00 /ex	0		
	FIRE PROTECTION	36,875.00 sf	3.96 /sf	146,000		
	MECHANICAL*	36,875.00 sf	99.10 /sf	3,654,219		
016000		ELECTRICAL*				
	016010	ELECTRICAL				
		Bldg Electrical	36,875.00 sf	50.72 /sf	1,870,250	B&B
		80kW Emergency Generator & Transfer Switching	* incl	0.00 /incl	0	
		4000 Amp Service	* incl	0.00 /incl	0	
	ELECTRICAL	36,875.00 sf	50.72 /sf	1,870,250		



Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
016740		COMMUNICATIONS & SECURITY				
		Fire Alarm	<i>* incl</i>	<i>0.00 /incl</i>	<i>0</i>	
		ELECTRICAL*	36,875.00 sf	50.72 /sf	1,870,250	
018000		ALLOWANCES*				
018005		ALLOWANCES				
		Subsurface Unknowns During Excavation	1.00 Is	50,000.00 /Is	50,000	
		Adjacent Building Monitoring	1.00 Is	10,000.00 /Is	10,000	
		Bike Ramp and Tread Nosings at Grand Stair	1.00 Is	15,000.00 /Is	15,000	
		Precast Beam and Brick Removal	1.00 Is	114,000.00 /Is	114,000	
		Irrigation - Install and Materials, Design by Others	1.00 Is	40,000.00 /Is	40,000	
		Radon Vent System	1.00 Is	40,000.00 /Is	40,000	
		PV Disconnect and Metering	1.00 Is	10,000.00 /Is	10,000	
		DAS System	<i>* ex</i>	<i>0.00 /ex</i>	<i>0</i>	<i>Public and Cellular</i>
		30 kW UPS System	1.00 Is	70,000.00 /Is	70,000	
		Structured Cabling	1.00 Is	96,500.00 /Is	96,500	
		Lobby Radius Stair Treads and Railing	2.00 fIt	50,000.00 /fIt	100,000	
		Geothermal Concrete Basin	1.00 Is	150,000.00 /Is	150,000	
		Weather Conditions, Snow Removal, Temp Heating, Concrete Additives, etc.	1.00 Is	150,000.00 /Is	150,000	
		Mock Ups	1.00 Is	15,000.00 /Is	15,000	
		Neighbor Outreach	1.00 Is	10,000.00 /Is	10,000	
		LEED Dynamic Plaque	1.00 Is	6,000.00 /Is	6,000	
		A/V System	1.00 Is	90,000.00 /Is	90,000	
		Access Control / CCTV	1.00 Is	152,000.00 /Is	152,000	
		Repair Existing Building/Structure	1,000.00 sf	15.50 /sf	15,500	
		Waterproofing				
		Waterproofing and Topping Slab at Parking Structure Above Occupied Space	2,550.00 sf	20.00 /sf	51,000	
		Intumescent Paint and Draft Curtains at Atrium	1.00 Is	100,000.00 /Is	100,000	
		Underpinning for Foundation Excavation at SW Corner	500.00 sf	100.00 /sf	50,000	
		Public Communication Services	1.00 Is	54,725.00 /Is	54,725	
		Traffic Control	1.00 Is	50,000.00 /Is	50,000	
		Primary Electrical Cable	1.00 Is	75,978.00 /Is	75,978	
		Expansion Joints and Waterproofing Tie In to Existing Structures	1.00 Is	15,000.00 /Is	15,000	
		ACO Interiors	1.00 Is	2,606,482.00 /Is	2,606,482	
		ALLOWANCES	36,875.00 sf	112.20 /sf	4,137,185	
		ALLOWANCES*	36,875.00 sf	112.20 /sf	4,137,185	
019000		INSURANCE/PERMITS/MISC				
019300		PERMITS				
		Land Lease Fees	<i>* ex</i>	<i>0.00 /ex</i>	<i>0</i>	<i>N/A</i>
		MEP Permits - Assumed 50% of Fee is Waived	1.00 Is	30,000.00 /Is	30,000	N/A
		PERMITS	36,875.00 sf	0.81 /sf	30,000	
		INSURANCE/PERMITS/MISC	36,875.00 sf	0.81 /sf	30,000	



Estimate Totals

Description	Amount	Totals	Rate
	21,642,619	21,642,619	
Subcontractor Bonds (included)			
Material Sales Tax - Exempt		21,642,619	
General Liability - w/GC's			
Builders Risk - w/GC's			
Warranty Reserve - w/GC's			
P & P Bond - w/GC's			
Cloud Technology Services	29,867		0.125 %
	<u>29,867</u>	21,672,486	
Preconstruction			
Estimating Contingency	119,469		0.500 %
Design Contingency	433,450		2.000 %
Contractor Contingency	433,450		2.000 %
Contractor Fee	1,234,908		5.450 %
Total		23,893,763	

Activity ID	Activity Name	BL Project	BL Project Start	BL Project Finish	Original Duration	2019												2020												2021									
						December	January	February	March	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June	July	August	September	October	November	December	January	February							
04.15.2019 - Aspen City Offices						466	01/21/19	12/11/20	466																														
Select Demolition						81	01/21/19	05/13/19	81																														
DM0130	Deconstruction - Notice to Proceed	1	01/21/19	01/21/19	1	Deconstruction - Notice to Proceed																																	
DM0100	Mobilize for Deconstruction	5	02/04/19	02/08/19	5	Mobilize for Deconstruction																																	
DM02520	Install Temp Fencing & Temp Protection	14	02/05/19	02/22/19	14	Install Temp Fencing & Temp Protection																																	
DM0110	Select Deconstruction	55	02/08/19	04/25/19	55	Select Deconstruction																																	
DM0120	Complete Deconstruction	1	05/13/19	05/13/19	1	Complete Deconstruction																																	
General Summary						438	02/28/19	12/11/20	438																														
GSUM100	Construction Start	0	04/12/19		0	Construction Start																																	
GSUM110	Construction Duration (work days)	407	04/12/19	12/11/20	407	Construction Duration (work days)																																	
GSUM160	Utility & Demo - Notice to Proceed	1	02/28/19	02/28/19	1	Utility & Demo - Notice to Proceed																																	
GSUM140	Receive Utility Permits	1	03/11/19	03/11/19	1	Receive Utility Permits																																	
GSUM150	Receive Excavation & Core & Shell Permits	1	05/14/19	05/14/19	1	Receive Excavation & Core & Shell Permits																																	
GSUM120	Construction Finish	0		12/11/20	0	Construction Finish																																	
Utilities - Rio Grande						89	04/01/19	08/16/19	89																														
SU02110	Relocate Utilities - Phase 1	44	04/01/19	05/31/19	44	Relocate Utilities - Phase 1																																	
SU02130	Food & Wine / 4th of July Holidays	25	06/03/19	07/19/19	25	Food & Wine / 4th of July Holidays																																	
SU02120	Relocate Utilities - Phase 2 - TBD	20	07/22/19	08/16/19	20	Relocate Utilities - Phase 2 - TBD																																	
Detailed Utilities						44	04/08/19	06/07/19	44																														
Sewer						4	05/09/19	05/14/19	4																														
U02100	Install New 6" Sewer Garage	1	05/09/19	05/09/19	1	Install New 6" Sewer Garage																																	
U02110	Install New 6" Sewer ACO	1	05/10/19	05/10/19	1	Install New 6" Sewer ACO																																	
U02120	Remove Existing Sewer Garage	2	05/13/19	05/14/19	2	Remove Existing Sewer Garage																																	
Water						23	04/08/19	05/08/19	23																														
U02140	Pot Hole Restrain Existing GV STA 499+65	1	04/08/19	04/08/19	1	Pot Hole Restrain Existing GV STA 499+65																																	
U02150	Remove Dispose Existing 8" CIP RG Place	3	04/08/19	04/10/19	3	Remove Dispose Existing 8" CIP RG Place																																	
U02130	Install 8" GV Existing 8"x6" Garage Water Service	1	04/25/19	04/25/19	1	Install 8" GV Existing 8"x6" Garage Water Service																																	
U02160	Furnish Install 8" DIP 499+65 / 502+29.6	3	04/29/19	05/01/19	3	Furnish Install 8" DIP 499+65 / 502+29.6																																	
U02170	Furnish Install 6" DIP Service to ACO	1	05/01/19	05/01/19	1	Furnish Install 6" DIP Service to ACO																																	
U02180	Furnish Install 8" DIP 502+97.1 / 503+48.79	1	05/02/19	05/02/19	1	Furnish Install 8" DIP 502+97.1 / 503+48.79																																	
U02190	Furnish 8"x6" FH Assembly	1	05/03/19	05/03/19	1	Furnish 8"x6" FH Assembly																																	
U02200	Furnish Install 8" DIP 502+97.1 / 503+34.17	1	05/06/19	05/06/19	1	Furnish Install 8" DIP 502+97.1 / 503+34.17																																	
U02210	Expose Existing 6" DIP Garage Service	1	05/06/19	05/06/19	1	Expose Existing 6" DIP Garage Service																																	
U02220	Furnish Install BO Assemble 503+17 BACTee Pressure	1	05/07/19	05/07/19	1	Furnish Install BO Assemble 503+17 BACTee Pressure Test etc																																	
U02230	Furnish Install 8" DIP/Connect 6" DIP Garage Service 5	1	05/08/19	05/08/19	1	Furnish Install 8" DIP/Connect 6" DIP Garage Service 503+34.17 / 503+70.79																																	
Storm						9	04/15/19	04/25/19	9																														
U02240	Furnish Install 24" RCP	1	04/22/19	04/22/19	1	Furnish Install 24" RCP																																	
U02250	Remove Replace MH A1.0	1	04/23/19	04/23/19	1	Remove Replace MH A1.0																																	
U02260	Furnish Install 18" RCP Inlet A1.1 & A1.2 Remove Existing	2	04/24/19	04/25/19	2	Furnish Install 18" RCP Inlet A1.1 & A1.2 Remove Existing Inlet Pipe																																	
U02270	Furnish Install 12" C900 + Nyoplast Inlet	1	04/15/19	04/15/19	1	Furnish Install 12" C900 + Nyoplast Inlet																																	
U02280	Furnish Install 15" RCP Temporary MH Inlet A1.3	4	04/15/19	04/18/19	4	Furnish Install 15" RCP Temporary MH Inlet A1.3																																	
U02290	Furnish Install 16" C900 Connect to Existing Inlet	1	04/18/19	04/18/19	1	Furnish Install 16" C900 Connect to Existing Inlet																																	
U02300	Furnish Install 15" RCP MH A1.5	2	04/19/19	04/22/19	2	Furnish Install 15" RCP MH A1.5																																	
U02310	Furnish Install 6" DIP 1.5	1	04/23/19	04/23/19	1	Furnish Install 6" DIP 1.5																																	
U02320	Furnish Install 8" PVC	1	04/24/19	04/24/19	1	Furnish Install 8" PVC																																	
Remaining Utilities						22	05/08/19	06/07/19	22																														
U02430	Relocate Elect. Service at Puppy Smith	10	05/08/19	05/21/19	10	Relocate Elect. Service at Puppy Smith																																	
U02390	Remove Dispose Existing 8" CIP RG Place	2	05/15/19	05/16/19	2	Remove Dispose Existing 8" CIP RG Place																																	
U02330	Furnish Install 8" DIP 503+70.79/ 504+94.91	1	05/17/19	05/17/19	1	Furnish Install 8" DIP 503+70.79/ 504+94.91																																	
U02340	Furnish Install BO Assemble BACTee Pressure Test etc	1	05/20/19	05/20/19	1	Furnish Install BO Assemble BACTee Pressure Test etc																																	
U02350	Connect to Existing 504+94.91	1	05/21/19	05/21/19	1	Connect to Existing 504+94.91																																	
U02360	Furnish Install 3/4" Service 503+70.34	2	05/22/19	05/23/19	2	Furnish Install 3/4" Service 503+70.34																																	
U02370	Furnish Install 3/4" Service 504+58.27	1	05/24/19	05/24/19	1	Furnish Install 3/4" Service 504+58.27																																	
U02380	Remove Dispose Existing FH Assembly	2	05/28/19	05/29/19	2	Remove Dispose Existing FH Assembly																																	
U02400	Furnish Install 15" RCP Remove Replace Inlet A2.0 Furnish Install Inlet A2.1 + 8" PVC	3	05/30/19	06/03/19	3	Furnish Install 15" RCP Remove Replace Inlet A2.0 Furnish Install Inlet A2.1 + 8" PVC																																	
U02410	Furnish Install 15" RCP Remove Replace MH 3.0 Furnish Install Inlet A4.0 & A5.0	2	06/04/19	06/05/19	2	Furnish Install 15" RCP Remove Replace MH 3.0 Furnish Install Inlet A4.0 & A5.0																																	
U02420	Furnish Install Elec & Comm Conduits + Vault Water ST.	2	06/06/19	06/07/19	2	Furnish Install Elec & Comm Conduits + Vault Water STA 504+71.50; Ending Shallow Utility STA 15+65.76																																	
Demolition						20	07/08/19	08/02/19	20																														
DM02500	Mobilization	5	07/08/19	07/12/19	5	Mobilization																																	
DM02530	Initial Survey	2	07/09/19	07/10/19	2	Initial Survey																																	
DM02510	Safe-Off Utilities	2	07/11/19	07/12/19	2	Safe-Off Utilities																																	
DM02550	Demolition	10	07/15/19	07/26/19	10	Demolition																																	
DM02560	Complete State Demo Certification	5	07/29/19	08/02/19	5	Complete State Demo Certification																																	

<p>Remaining Level of Effort (Green bar)</p> <p>Actual Level of Effort (Blue bar)</p>	<p>Project Baseline Bar (Yellow bar)</p> <p>Actual Work (Blue bar)</p>	<p>Remaining Work (Green bar)</p> <p>Critical Remaining (Red bar)</p>	<p>Date</p>	<p>Revision</p>	<p>Checked</p>	<p>Approved</p>
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Aspen City Offices - 50% CD / Permit Set

Aspen, CO
5/3/2019

BUDGET STATUS LOG

Starting Budget = \$25,467,274
Revised Budget = \$25,467,274

No.	DATE LOGGED	CSI DIV.	DESCRIPTION	VALUE	STATUS	REJECTED	PENDING	ACCEPTED	TOTAL	COMMENTS
Starting Budget										
\$25,467,274										
1		01000	1 Year Warranty Reserve ILO 2 Year	(48,000)	P	-	(48,000)	-	\$25,467,274	
2		01000	Remove Shaw P&P Bond	(158,000)	P	-	(158,000)	-	\$25,467,274	
3		03000	Colored Concrete ILO Exposed Aggregate Concrete at Entry and Plaza	(71,000)	P	-	(71,000)	-	\$25,467,274	
4		04000	Stone Clad Landscape Seat Walls	154,000	P	-	154,000	-	\$25,467,274	
5		05000	Metal Railing ILO Glass Railing	(114,000)	P	-	(114,000)	-	\$25,467,274	\$200/LF Allowance for Metal Railing
6		07000	EPDM Roof ILO Skylight	(48,000)	P	-	(48,000)	-	\$25,467,274	
7		08000	Alternate Bendheim Glass - Change to 100% Rough Cast Glass	(23,000)	P	-	(23,000)	-	\$25,467,274	Current Spec is 30% Clarissimo / 70% 504 Rough Cast glass
8		09000	Delete 9wood 1100 Series Grilles	(110,000)	P	-	(110,000)	-	\$25,467,274	
9		09000	Replace Tectum Ceilings with ACT	(90,000)	P	-	(90,000)	-	\$25,467,274	
10		09000	Replace ACT w/ Hardlid	112,000	P	-	112,000	-	\$25,467,274	Does not account for Item 9 if Accepted
11		13000	Premium for 50kW system ILO 30kW System	88,000	P	-	88,000	-	\$25,467,274	
12		13000	Delete 30kW PV System	(98,000)	P	-	(98,000)	-	\$25,467,274	
13		14000	Elevator Battery-Return Units	9,000	P	-	9,000	-	\$25,467,274	Not Required by Code; CCA to Confirm
14		15000	Clean Agent Fire Suppression System in Data Center	28,000	P	-	28,000	-	\$25,467,274	Base GMP includes Wet System
15		15000	Premium for APC Row Cooling System in Data Center ILO Mini Split Systems	121,000	P	-	121,000	-	\$25,467,274	
16		15000	Add for DDC Dashboard	17,000	P	-	17,000	-	\$25,467,274	Included in Spec, not Done at APD



City Offices
City of Aspen
 CCA
 Office 50% CD / Permit Set GMP Estimate
Executive Summary

TOTAL PROJECT			
Description	\$	\$/SF of Bldg	Comments
City Offices			36,875 GSF
General Conditions	2,075,778	56.29	17 Months
Sitework	3,720,369	100.89	
Building	13,239,991	359.05	
Interiors	2,606,482	70.68	
<i>Subtotal</i>	<i>21,642,620</i>	<i>586.92</i>	
Tech Services	29,867	0.81	
Estimating Contingency - 0.5%	119,469	3.24	
Design Contingency - 2%	433,450	11.75	
Contractor Contingency - 2%	433,450	11.75	
Preconstruction Fee		-	Included Elsewhere
Contractor Fee - 5.45%	1,234,908	33.49	
VE Total		-	Pending Accepted BSL Items
<i>City Offices Budget</i>	<i>23,893,764</i>	<i>647.97</i>	
<i>Rio Grande Bldg Renovation</i>	<i>900,000</i>		<i>Allowance</i>
<i>Total Project</i>	<i>24,793,764</i>		

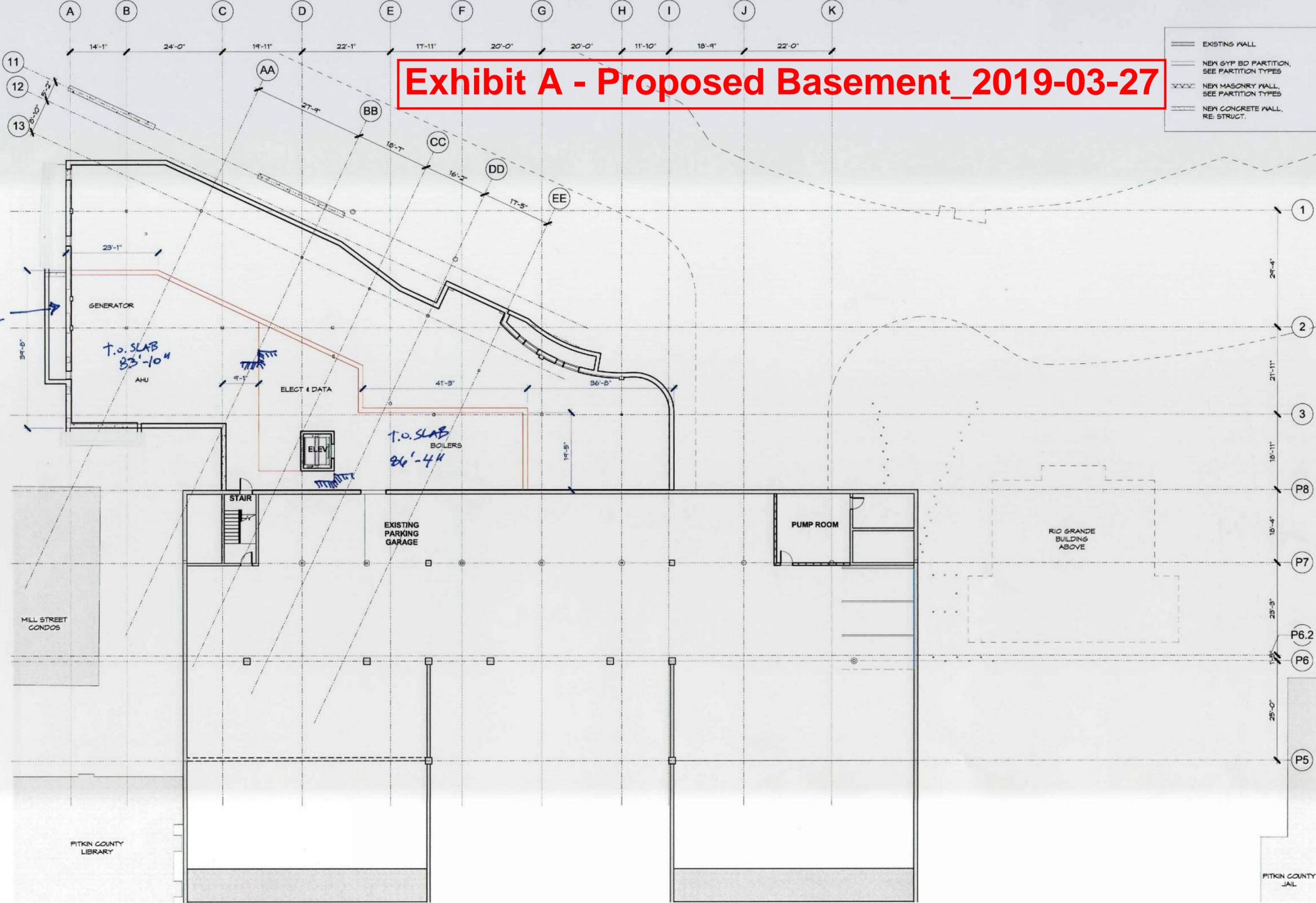
Exhibit A - Proposed Basement_2019-03-27

- EXISTING WALL
- NEW GYP BD PARTITION, SEE PARTITION TYPES
- NEW MASONRY WALL, SEE PARTITION TYPES
- NEW CONCRETE WALL, RE. STRUCT.

AREA WELL

T.O. SLAB
33'-10"

T.O. SLAB
26'-4"



CHARLES CUNIFF ARCHITECTS
cuniffe.com
610 EAST HYMAN AVE.
ASPEN, CO 81611
TEL: 970.925.5590
FAX: 970.920.4557

ASPEN CITY OFFICES
425 RIO GRANDE PLACE
ASPEN, CO

LOWER LEVEL -
REFERENCE
FLOOR PLAN

ISSUE:	DATE:
50% DD	10/30/17
100% DD	12/12/17
PERMIT	02/07/18
JOB NO. 1632	

SHEET NO.
A2.1

REVISED BASEMENT PLAN
LEVEL 0 FLOOR PLAN
3/32" = 1'-0"
3.27.19



KUTNER ASSOCIATES

Exhibit A - Proposed Basement_2019-03-27



CHARLES CUNIFFE ARCHITECTS

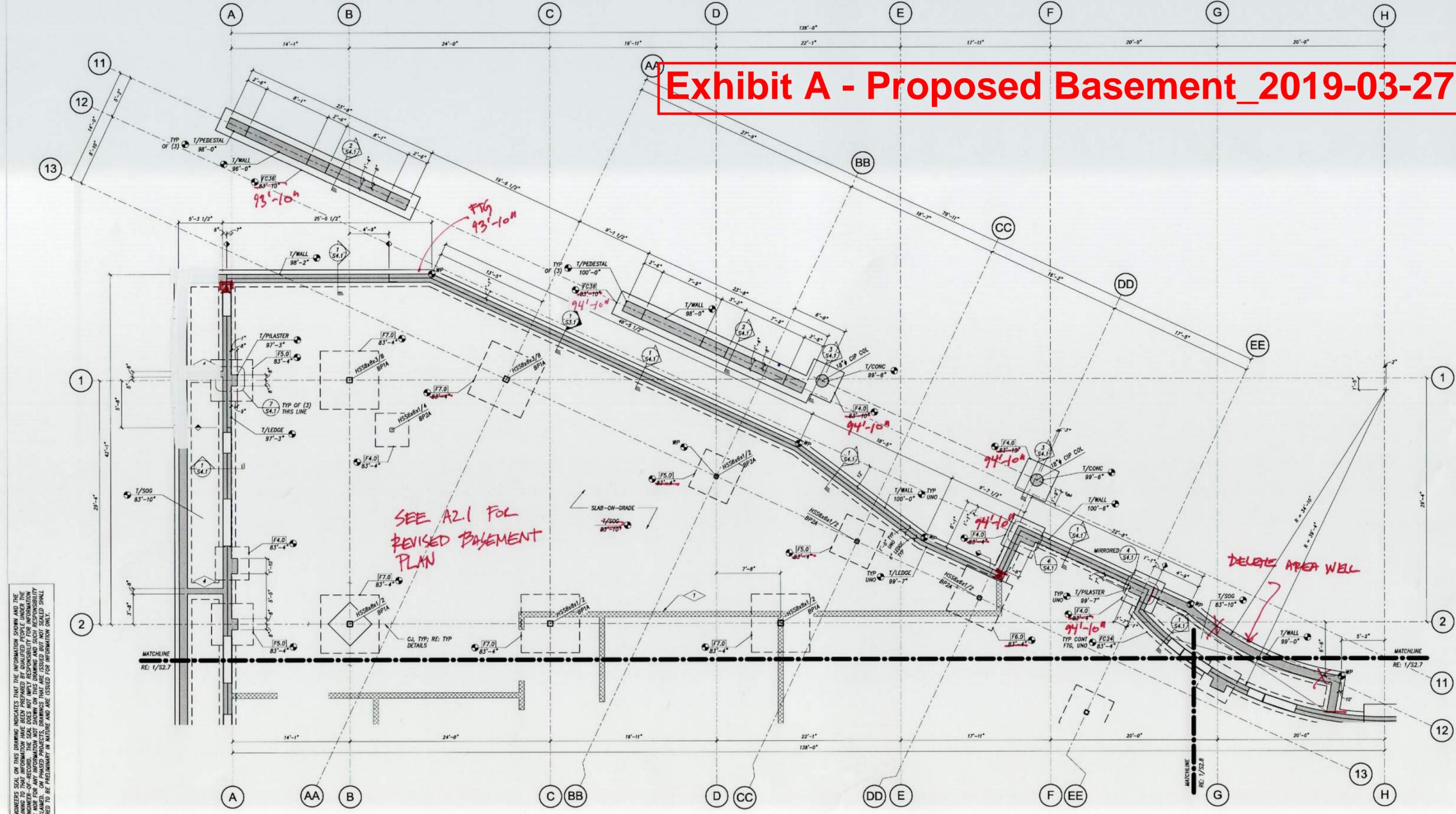


ASPEN CITY OFFICES
425 RIO GRANDE PLACE
ASPEN, CO

LOWER LEVEL
PARTIAL
FOUNDATION
PLAN - AREA A

ISSUE:	DATE:
50% DD	10/30/17
100% DD	12/12/17
PERMIT	02/07/18

JOB NO. 80448
SHEET NO.
S2.6



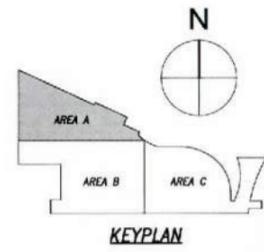
1 PARTIAL FOUNDATION PLAN - AREA A
3/16" = 1'-0"

- FOUNDATION PLAN NOTES:**
- FLOOR CONSTRUCTION: 4" NORMAL WEIGHT CONCRETE SLAB-ON-GRADE, REINFORCE WITH #6@12x12.1 WWF.
 - RE: PLAN FOR TOP OF SLAB ELEVATION.
 - RE: SHEET S0.1 - S0.3 FOR GENERAL NOTES.
 - RE: SHEET S0.1 FOR PLAN AND GENERAL LEGEND.
 - RE: SHEET S0.20 - S0.25 FOR TYPICAL DETAILS.
 - RE: SHEET S4.1 FOR FOOTING & BASE PLATE SCHEDULE.

KEYED NOTES LOWER LEVEL FOUNDATION PLAN

- NON-STRUCTURAL CMU PARTITION WALL, RE: ARCH & TYP DETAILS FOR THICKENED SLAB AT WALLS, TYP.
- SUMP PIT, RE: DETAILS & ELEVATION MANUFACTURER.
- DOVEL (N) FOR WALL TO (E) FOR WALL W/ #5 DOVELS TO MATCH HORIZ WALL REINF, 6" MIN EMBED.
- 8" CONC FOR WALL, REINF W/ #6@18" OC CENTERED.

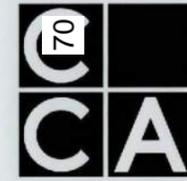
REVISIONS. 3.27.19



THE STRUCTURAL ENGINEER'S SEAL ON THIS DRAWING INDICATES THAT THE INFORMATION SHOWN AND THE CALCULATIONS PERTAINING TO THAT INFORMATION HAVE BEEN PREPARED BY QUALIFIED PEOPLE UNDER THE DIRECTION OF THE ENGINEER-OF-RECORD. THE SEAL DOES NOT IMPLY RESPONSIBILITY FOR INFORMATION PREPARED BY OTHERS WHOSE NAMES ARE SHOWN ON THIS DRAWING. THE ENGINEER-OF-RECORD SHALL BE RESPONSIBLE FOR THE ACCURACY OF ALL INFORMATION SHOWN ON THIS DRAWING. THIS DRAWING IS SPECIFICALLY PREPARED FOR THE PROJECT AND SHALL BE CONSIDERED TO BE PRELIMINARY IN NATURE AND ARE ISSUED FOR INFORMATION ONLY.

THESE DRAWINGS ARE TO BE USED IN CONJUNCTION WITH THE ARCHITECTURAL DRAWINGS ON THE PROJECT TO CLEARLY DEFINE ALL OF THE REQUIREMENTS FOR THE CONSTRUCTION. WHERE COMPLETION OF THE ARCHITECT FOR CLARIFICATION.

Exhibit A - Proposed Basement_2019-03-27



CHARLES CUNIFFE ARCHITECTS

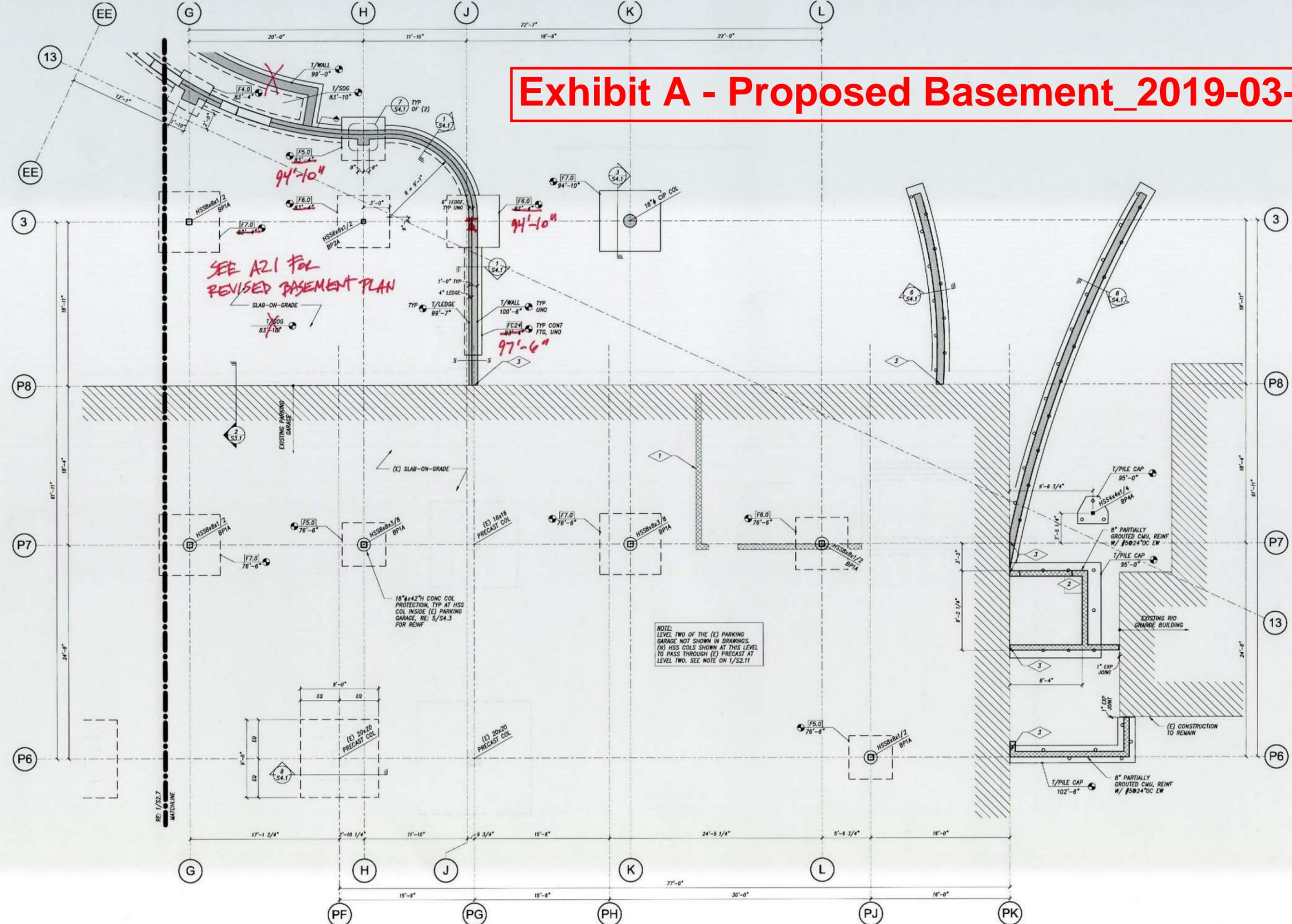


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425 RIO GRANDE PLACE
ASPEN, CO

LOWER LEVEL
PARTIAL
FOUNDATION
PLAN - AREA C

ISSUE:	DATE:
50% DD	10/30/17
100% DD	12/12/17
PERMIT	02/01/18
JOB NO. B0448	

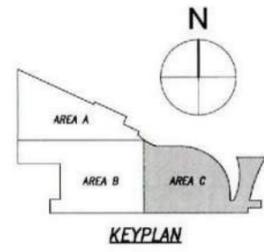
SHEET NO.
S2.8



1 PARTIAL FOUNDATION PLAN - AREA C
3/16" = 1'-0"

- FOUNDATION PLAN NOTES:**
- FLOOR CONSTRUCTION: 4" NORMAL WEIGHT CONCRETE SLAB-ON-GRADE, REINFORCE WITH 6x6@2.1W@2.1 W/W.
 - RE: PLAN FOR TOP OF SLAB ELEVATION.
 - RE: SHEET S0.1 - S0.3 FOR GENERAL NOTES.
 - RE: SHEET S0.1 FOR PLAN AND GENERAL LEGEND.
 - RE: SHEET S0.20 - S0.25 FOR TYPICAL DETAILS.
 - RE: SHEET S4.1 FOR FOOTING & BASE PLATE SCHEDULE.

REVISIONS. 3-27-19



THE STRUCTURAL ENGINEERS SEAL ON THIS DRAWING INDICATES THAT THE INFORMATION SHOWN AND THE CALCULATIONS PERTAINING TO THAT INFORMATION HAVE BEEN PREPARED BY QUALIFIED PEOPLE UNDER THE SUPERVISION OF THESE ENGINEERS. THE INFORMATION NOT SHOWN ON THIS DRAWING AND SUCH RESPONSIBILITY IS SPECIFICALLY DISCLAIMED. ON PHASED PROJECTS, DRAWINGS THAT ARE ISSUED BUT NOT SEALED SHALL BE CONSIDERED TO BE PRELIMINARY IN NATURE, AND ARE ISSUED FOR INFORMATION ONLY.

THESE DRAWINGS ARE TO BE USED IN CONJUNCTION WITH THE ARCHITECTURAL DRAWINGS ON THE PROJECT TO CLEARLY DEFINE ALL OF THE REQUIREMENTS OF THE PROJECT. ANY DISCREPANCIES OR CONFLICTS OCCUR CONTACT ARCHITECT FOR CLARIFICATION.

Exhibit B - Change to Construction Type IIB_2019-02-13

	MINIMUM NUMBER OF CODE REQUIRED PLUMBING FIXTURES				
	OCCUPANT LOAD	IBC + IFC REQUIREMENTS	REQUIRED *	PROPOSED *	
MIDDLE LEVEL GROUP B OCCUPANCY + 127 PPL	WATER CLOSETS				
	MALE	64	1 PER 25 FOR FIRST 50 1 PER 50 FOR REMAINDER	3	2
	FEMALE	64	1 PER 25 FOR FIRST 50 1 PER 50 FOR REMAINDER	3	3
	URINALS		SUBSTITUTES FOR MAX 50% OF M/C	NA	1
	LAVATORIES				
	MALE	64	1 PER 40 FOR FIRST 50 1 PER 50 FOR REMAINDER	2	2
	FEMALE	64	1 PER 40 FOR FIRST 50 1 PER 50 FOR REMAINDER	2	2
	DRINKING FOUNTAINS	127	1 PER 500	3	2*
	SERVICE SINK		1 SERVICE SINK REQUIRED		
	UPPER LEVEL GROUP B OCCUPANCY + 15 PPL	WATER CLOSETS			
MALE		9	1 PER 25 FOR FIRST 50 1 PER 50 FOR REMAINDER	1	1
FEMALE		9	1 PER 25 FOR FIRST 50 1 PER 50 FOR REMAINDER	1	1
URINALS			SUBSTITUTES FOR MAX 50% OF M/C	NA	0
LAVATORIES					
MALE		9	1 PER 40 FOR FIRST 50 1 PER 50 FOR REMAINDER	1	1
FEMALE		9	1 PER 40 FOR FIRST 50 1 PER 50 FOR REMAINDER	1	1
DRINKING FOUNTAINS		17	1 PER 500	1	1
SERVICE SINK			1 SERVICE SINK REQUIRED		
UPPER LEVEL GROUP A OCCUPANCY + 212 PPL		WATER CLOSETS			
	MALE	106	1 PER 125	1	2
	FEMALE	106	1 PER 65	2	2
	URINALS		SUBSTITUTES FOR MAX 50% OF M/C	NA	1
	LAVATORIES				
	MALE	106	1 PER 200	5	1
	FEMALE	106	1 PER 200	5	1
	DRINKING FOUNTAINS	106	1 PER 500	1	2*
	SERVICE SINK		1 SERVICE SINK REQUIRED		

*PER IBC 2015 SECTION 1104.5.1

OCCUPANCY CALCULATIONS						
	AREA ON PLAN	OCCUPANCY	GROSS AREA (SF)	OCCUPANT (SF/PERSON)	LOAD (PPL)	COMMENTS
BASEMENT B2	PARKING LEVEL 1	S-2	19,712	300	46	
LOWER LEVEL	LOWER LEVEL MECH/STORAGE	S-1	6,128	300	27	
	PARKING LEVEL 2	S-2	36,461	300	124	
MAIN LEVEL	MAIN LEVEL OFFICE	B	12,732	100	127	
	EXTERIOR COVERED AREA 1 (OFFICE)	B	1031	N/A	0	
	EXTERIOR COVERED AREA 2 (OFFICE)	B	2,806	N/A	0	
	PARKING LEVEL 3	S-2	31,350	300	105	
	RESTAURANT	A-2	1,540			(SEPARATE BUILDING)
MIDDLE LEVEL	MIDDLE LEVEL OFFICE	B	19,350	100	156	
	PARKING LEVEL 4	S-2	34,955	300	117	
	LIBRARY LOWER LEVEL	A-3	12,447			
UPPER LEVEL	MIDDLE LEVEL RIO GRANDE	B	2,282			OFFICE (SEPARATE BUILDING)
	UPPER LEVEL OFFICE	B	1,752	100	18	
	EXTERIOR COVERED AREA (ASSEMBLY)	B	1,000	19 NET	125	UNCONCENTRATED
	MEETING ROOM 1	A-3	2,341	19 NET	154	UNCONCENTRATED
	MEETING ROOM 2	A-3	800	19 NET	59	UNCONCENTRATED
	CIRCULATION		1,554	0	0	CIRCULATION/NON-CONCURRENT USE
	MAIN LEVEL LIBRARY	A-3	15,610			
	EXTERIOR COVERED AREA (LIBRARY)	A-3	453			
	EXTERIOR COVERED AREA (PARKING)	S-2	656	300	3	
	PARKING PLAZA LEVEL	S-2	264	300	1	
LIBRARY MEZZ	UPPER LEVEL RIO GRANDE	B	2,355			OFFICE (SEPARATE BUILDING)
	LIBRARY MEZZ LEVEL	A-3	8,136			
	LIBRARY OUTDOOR TERRACE	A-3	631			

BUILDING CODE ANALYSIS

CODE JURISDICTION:

2015 INTERNATIONAL BUILDING CODE
 2015 INTERNATIONAL PLUMBING CODE
 2015 INTERNATIONAL MECHANICAL CODE
 2015 INTERNATIONAL FIRE CODE
 2015 INTERNATIONAL PUE CODE
 2011 NATIONAL ELECTRIC CODE
 2015 INTERNATIONAL ENERGY CONSERVATION CODE
 ICC ANS A111.1 2009
 CITY OF ASPEN LAND USE CODE, 2012 VERSION (REF. SUBDIVISION ORDINANCE)

OCCUPANCY:

MIXED USE
 GROUP A-5 - ASSEMBLY
 GROUP B - BUSINESS (OFFICE)
 GROUP S-1 - MECHANICAL/STORAGE
 GROUP S-2 - GARAGE

OCCUPANCY SEPARATION (TABLE 508.4)

NON-SEPARATED OCCUPANCY PER 508.3
 CIVIC - GARAGE (A3.B.5.2) - LIBRARY (A3) - 1 HOUR
 CIVIC - GARAGE (A3.B.5.2) - RIO GRANDE (A2.B)

CONSTRUCTION TYPE:

NEW CONSTRUCTION TYPICAL OF TYPE **IIB**
 EXISTING CONSTRUCTION (PARKING/GARAGE) TYPICAL OF TYPE **IIB**
 EXISTING CONSTRUCTION (LIBRARY) TYPICAL OF TYPE **IIB**
 EXISTING CONSTRUCTION (RIO GRANDE) TYPICAL OF TYPE **IIB**

FIRE RESISTANCE RATING REQUIREMENTS:

(FOR NEW CONSTRUCTION) (IBC TABLE 601.60.2 AND 106.4)

STRUCTURAL FRAME: **3HR**
 BEARING WALLS, EXTERIOR: **2HR**
 BEARING WALLS, INTERIOR: **2HR**
 NON-BEARING WALLS, EXTERIOR: **1HR**
 NON-BEARING WALLS, INTERIOR: **0 HR**
 1 HR IF + 10 FT FIRE SEPARATION DISTANCE (IBC TABLE 602)
 +0 HRS IF + 10 FT FIRE SEPARATION DISTANCE (IBC TABLE 602)
 FLOOR CONSTRUCTION: **2HR**
 ROOF CONSTRUCTION: **2HR**
 *PARAPETS NOT REG'D PER SECTION 105.11 EXCEPTION #1

MAXIMUM AREA OF EXTERIOR WALL OPENINGS BASED ON FIRE SEPARATION DISTANCE AND DEGREE OF OPENING PROTECTION (IBC TABLE 705.5)

0 FT TO LESS THAN 3 FT - NOT PERMITTED
 3 FT TO LESS THAN 5 FT - 15% OF WALL PER STORY FOR BOTH UP AND DOWN
 5 FT TO LESS THAN 10 FT - 25% OF WALL PER STORY FOR BOTH UP AND DOWN
 10 FT TO LESS THAN 15 FT - 45% OF WALL PER STORY FOR BOTH UP AND DOWN
 15 FT OR GREATER - NO LIMIT

AUTOMATIC SPRINKLER SYSTEMS:

PROVIDED PER 2015 IBC SECTIONS 903.2, 903.2.1, 903.2.B, AND 903.5.1, AND 2015 IFC SECTIONS 903 AND 907

COMMON PATH OF EGRESS TRAVEL DISTANCE (SECTION 1006.2.1 AND TABLE 1006.2.1)

FOR GROUPS A OCCUPANCIES: 75 FT (44 MAX OCCUPANTS AND SPRINKLED)
 FOR GROUP B OCCUPANCY: 100 FT (44 MAX OCCUPANTS AND SPRINKLED)
 FOR GROUP S OCCUPANCY: 100 FT (24 MAX OCCUPANTS AND SPRINKLED)
 (S: SPRINKLED PER SECTIONS 903.3.1.1 AND/OR 903.3.1.2)

EXIT TRAVEL DISTANCE (TABLE 1012.2)

FOR GROUPS A OCCUPANCIES: 250 FT
 FOR GROUP B OCCUPANCY: 300 FT
 FOR GROUP S-1 OCCUPANCY: 250 FT
 FOR GROUP S-2 OCCUPANCY: 400 FT
 (WITH SPRINKLER SYSTEM)

CORRIDORS (SECTION 1030)

DEAD-END CORRIDORS (SECTION 1030.4)
 50-FEET FOR OCCUPANCIES IN GROUPS B
 20-FEET FOR OCCUPANCIES IN GROUPS A + S
 WHEN SPRINKLED PER SECTION 903.5.1.1 (EXCEPTION 2)

PLUMBING FIXTURES (IBC SECTION 2102.1, TABLE 2102.1, AND IFC CHAPTER 4, TABLE 408.1)

GROUP B

WATER CLOSET: 1 PER 25 FOR FIRST 50, 1 PER 50 FOR REMAINDER EXCEEDING 50
 URINALS: SUBSTITUTE FOR UP TO 50 PERCENT OF M/C
 LAVATORY: 1 PER 40 FOR FIRST 50, 1 PER 50 FOR REMAINDER EXCEEDING 50
 DRINKING FOUNTAIN: 1 PER 100
 SERVICE SINK: 1 REQUIRED

GROUP A-3

WATER CLOSET: 1 PER 125 MALE, 1 PER 65 FEMALE
 URINALS: SUBSTITUTE FOR UP TO 67 PERCENT OF M/C
 LAVATORY: 1 PER 200
 DRINKING FOUNTAIN: 1 PER 500
 SERVICE SINK: 1 REQUIRED

PER 2015 INTERNATIONAL BUILDING CODE:

ALLOWABLE BUILDING HEIGHT IN FEET ABOVE GRADE PLANE BY USE (TABLE 504.3)

A: (7) SEVENTY-FIVE FEET ABOVE GRADE PLANE, WHEN SPRINKLED (S) (B-B)
 B: (7) SEVENTY-FIVE FEET ABOVE GRADE PLANE, WHEN SPRINKLED (S) (A-S)
 S: (U) UNLIMITED WHEN SPRINKLED (S) (A-A)

ALLOWABLE NUMBER OF STORIES ABOVE GRADE PLANE BY USE (TABLE 504.4)

A: (3) THREE STORIES ABOVE GRADE PLANE, WHEN SPRINKLED (S) (B-B)
 B: (4) FOUR STORIES ABOVE GRADE PLANE, WHEN SPRINKLED (S) (B-B)

ALLOWABLE AREA BY USE (TABLE 506.2)

M: 28,300 SF (5M SPRINKLERED MULTISTORY) (B-B)
 B: 57,000 SF (5M SPRINKLERED MULTISTORY) (B-B)
 S: UNLIMITED (5M SPRINKLERED MULTISTORY) (A-A)

MIXED-OCCUPANCY MULTISTORY BUILDING (SECTION 506.2.4)

ALLOWABLE AREA (EQUATION 5-1 IN SECTION 506.2.1)
 $A_B + A_L + (N_S \times P)$

FRONTAGE INCREASE (SECTION 506.3)

$I_f = (P/P - 0.25) P \geq 50$

$P = 60$ ft (perimeter of building open to public way of at least 20ft)
 $P = 240$ ft (perimeter of entire building)

PER SECTION 506.5 (1) MINIMUM FRONTAGE TO PUBLIC WAY SHALL BE 25% PERIMETER. $P/P \geq 60 \geq 25.00\% \geq 25\%$

NO AREA INCREASE FOR FRONTAGE.
 THEREFORE $A_B = A_L + (N_S \times P) \geq A_L + 0 \text{ OR } A_B = A_L$

frontage calcs updated in 3/5/19
 permit set, need to verify w/Type
 IIB



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ASPEN CITY OFFICES

425 RIO GRANDE PLACE
 ASPEN, CO

CODE
 ANALYSIS

ISSUE	DATE
50% DD	10/30/17
100% DD	11/13/17
PERMITS	02/07/19
JOB NO 1432	

SHEET NO.
A0.3

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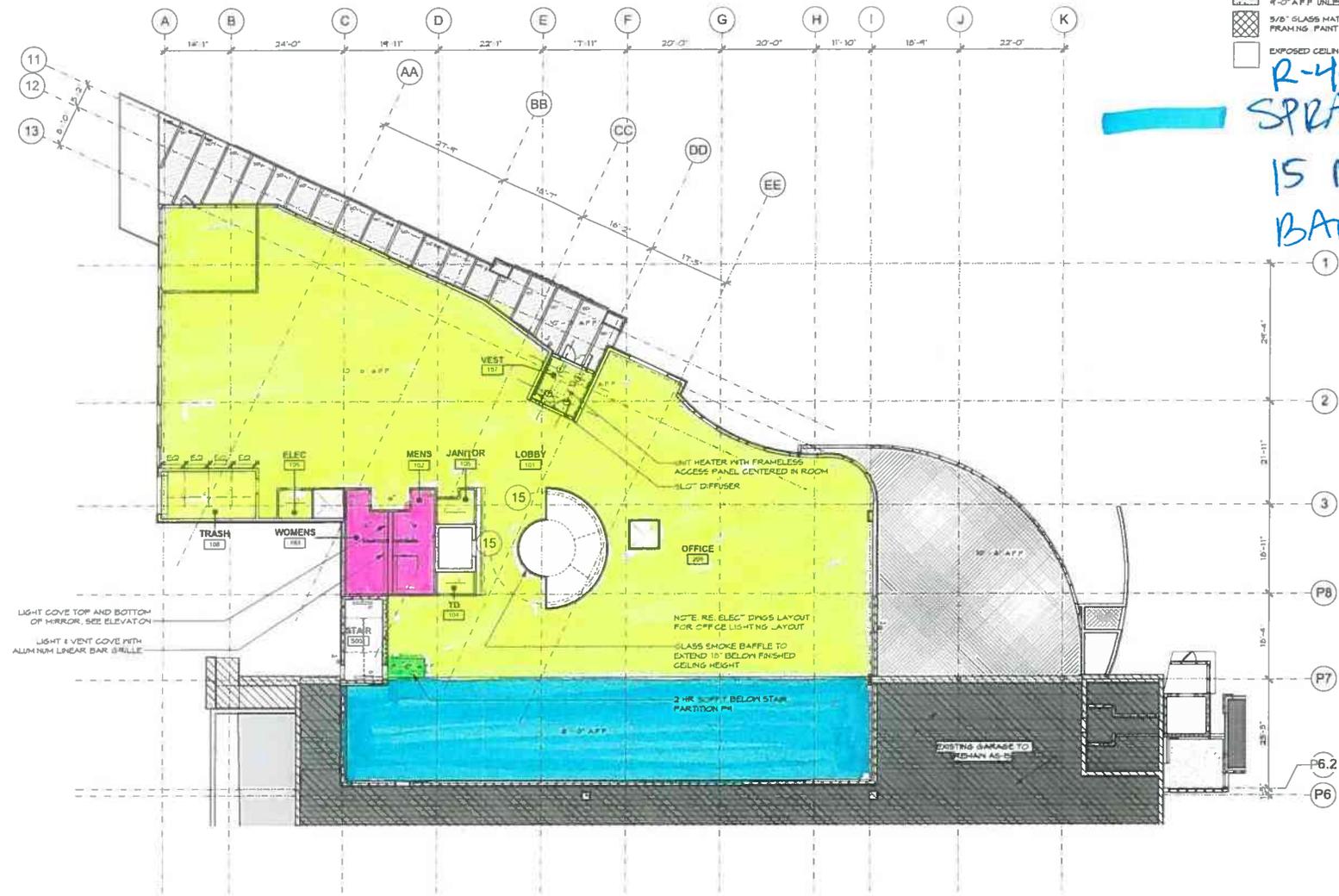
Exhibit B - Change to Construction Type IIB_2019-02-13

EXPOSED
2HR SOFFIT
GYP BD

RCP LEGEND

-  ACT-1
-  MTL-2
-  SUSPENDED 5/8" GYP BD CEILING OR SOFFIT 4'-0" A.F.F. UNLESS OTHERWISE STATED IN PLAN
-  5/8" GLASS MAT OVER COLD FORMED FRAMING. PAINT SKIN COAT PLASTER P-1
-  EXPOSED CEILING

R-40
SPRAY FOAM
15 MIN THERMAL
BARRIER



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ASPEN, CO

MAIN LEVEL REFLECTED CEILING PLAN

ISSUE	DATE
50% DD	10/20/15
100% CD	11/17/15
PERMIT	02/20/16
JOB NO 1632	

SHEET NO
A7.2

1 RCP - MAIN LEVEL
3/32" = 1'-0"

Exhibit B - Change to Construction Type IIB_2019-02-13

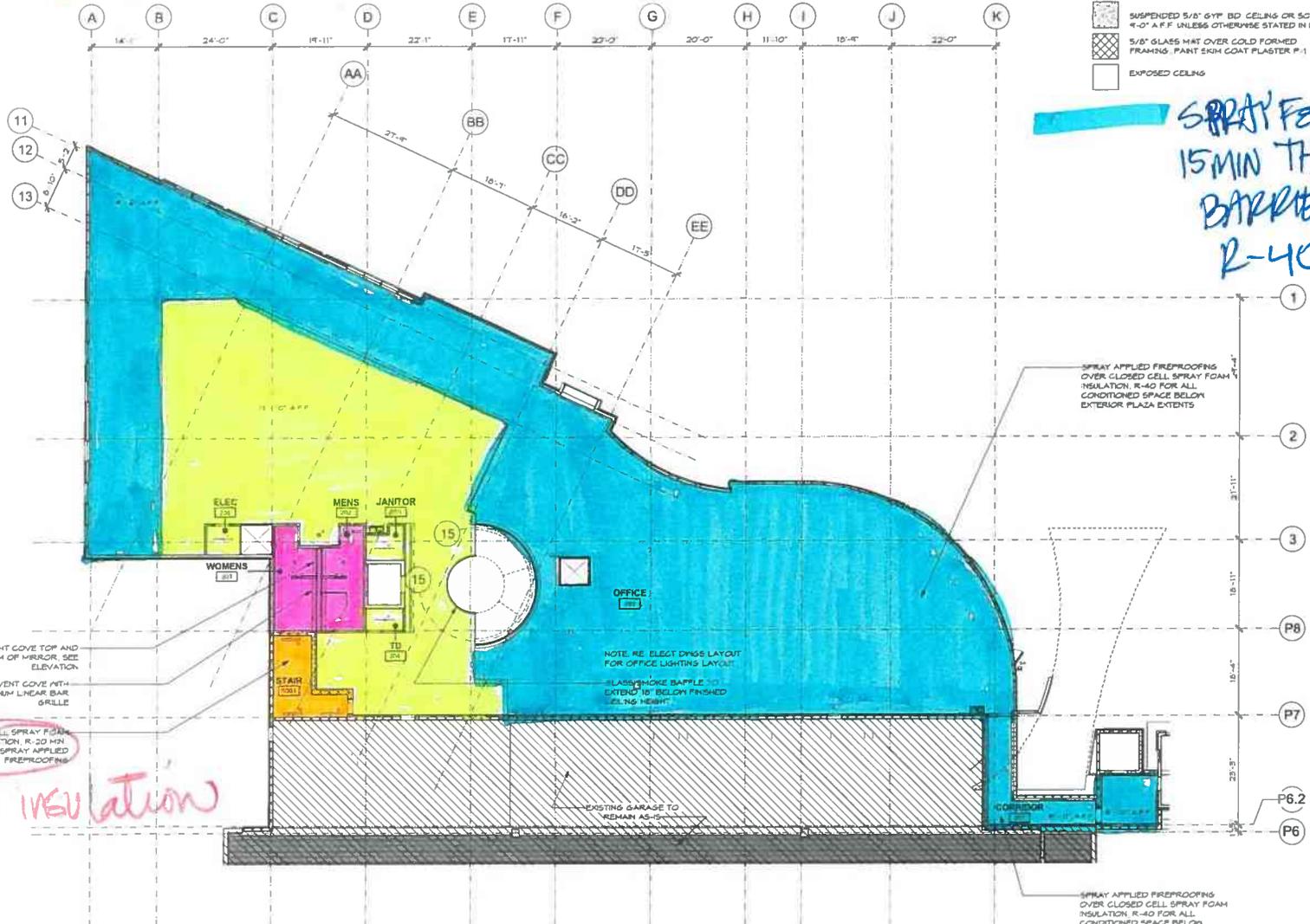
EXPOSED
R-20 BATT

GYP BD

RCP LEGEND

-  ACT-1
-  MTL-2
-  SUSPENDED 5/8" GYP. BD CEILING OR SOFFIT, 4'-0" A.F.F. UNLESS OTHERWISE STATED IN PLAN
-  5/8" GLASS MNT OVER COLD FORMED FRAMING, PAINT EKM COAT PLASTER P-1
-  EXPOSED CEILING

SPRAY FOAM
15 MIN THERMAL
BARRIER
R-40



R-20 INSULATION

SPRAY APPLIED FIREPROOFING OVER CLOSED CELL SPRAY FOAM INSULATION, R-40 FOR ALL CONDITIONED SPACE BELOW EXTERIOR PLAZA EXTENTS

NOTE: RE. ELEC DWGS LAYOUT FOR OFFICE LIGHTING LAYOUT

GLASS SMOKE BATTLE TO EXTEND 10' BELOW FINISHED CEILING HEIGHT

EXISTING GARAGE TO REMAIN AS IS

SPRAY APPLIED FIREPROOFING OVER CLOSED CELL SPRAY FOAM INSULATION, R-40 FOR ALL CONDITIONED SPACE BELOW EXTERIOR PLAZA EXTENTS



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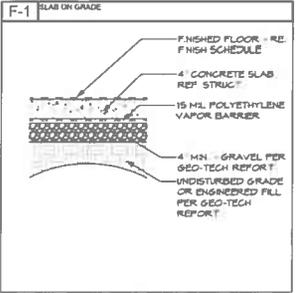
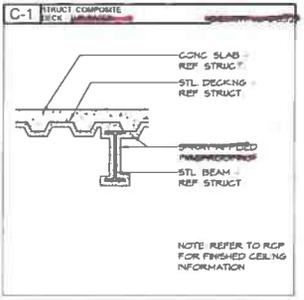
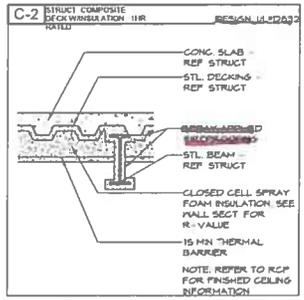
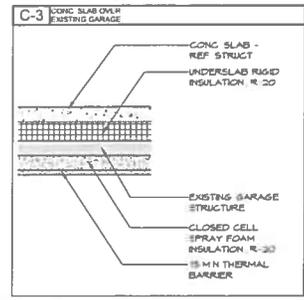
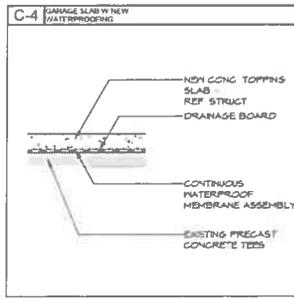
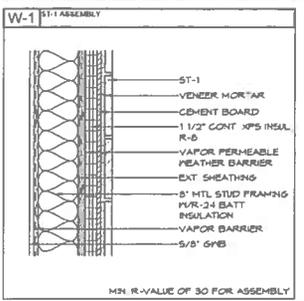
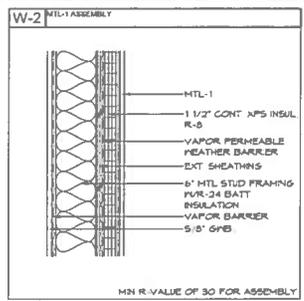
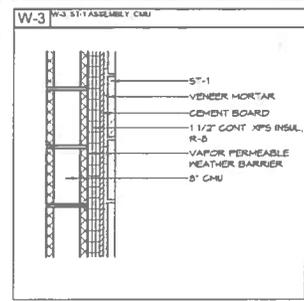
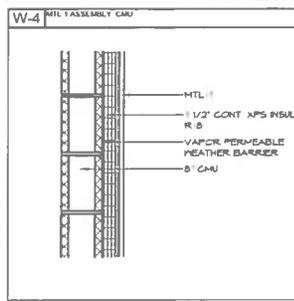
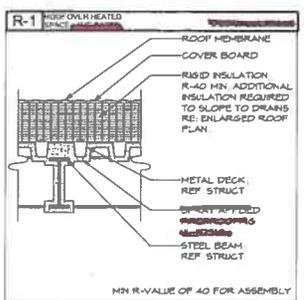
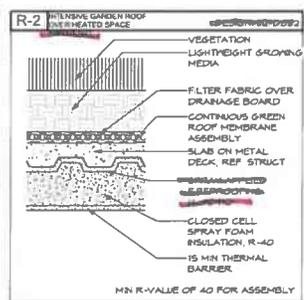
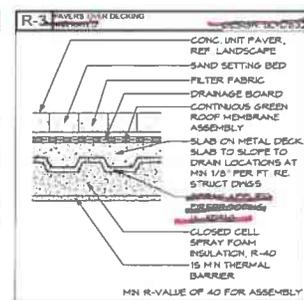
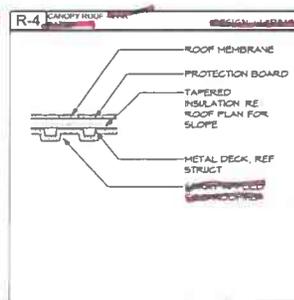
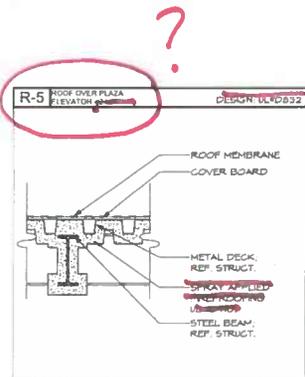
MIDDLE LEVEL REFLECTED CEILING PLAN

ISSUE	DATE
50% DD	10/20/17
100% DD	12/12/17
PERMIT	02/07/19
JOB NO 1632	

SHEET NO.
A7.3

1 RCP - MIDDLE LEVEL
3/32" = 1'-0"

Exhibit B - Change to Construction Type IIB_2019-02-13



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ASPEN, CO

ROOF, WALL, AND FLOOR ASSEMBLIES

ISSUE	DATE
REV. DD	10/20/13
FORM. DD	10/20/13
PRINT	12/20/13
JOB NO	1432

SHEET NO.
A9.1

SEE SHEET AD.6 FOR RATED STRUCTURE LOCATIONS

ULD832 : 2HR BEAM ASSEMBLY REQ'D FOR ALL BEAMS SUPPORTING 6 2HR WALLS.

4 COLUMN COVER 1HR RATED DESIGN: UL# X271

STL COLUMN SEE STRUCTURAL DWG'S
SPRAY-APPLIED FIRE RESISTIVE MATERIAL APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

2HR RATINGS FOR ALL LOCATIONS NOTED 3(A) RE: STRUCT. PLANS

~~**7 COLUMN COVER 1HR RATED** DESIGN: UL# X271~~

STL COLUMN SEE STRUCTURAL DWG'S
3/8" GYP BD
1 3/8" STEEL CHANNEL

HOUR RATINGS FOR 6X6 I-BEAM SHAPE
MN TS 444 x 0.188 1" 5B
MN TS 6X8 x 0.250 5B 0.25

6 COLUMN COVER 1HR RATED DESIGN: UL# X649

STL COLUMN SEE STRUCTURAL DWG'S
INTUMESCENT COATING APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

5 COLUMN COVER 1HR RATED DESIGN: UL# Y614

STL COLUMN SEE STRUCTURAL DWG'S
INTUMESCENT COATING APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

2HR RATINGS FOR ALL LOCATIONS NOTED 3(A) RE: STRUCT. PLANS

4 COLUMN COVER 1HR RATED DESIGN: UL# X271

STL COLUMN SEE STRUCTURAL DWG'S
SPRAY-APPLIED FIRE RESISTIVE MATERIAL APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

2HR RATINGS FOR ALL LOCATIONS NOTED 3(A) RE: STRUCT. PLANS

~~**7 COLUMN COVER 1HR RATED** DESIGN: UL# X271~~

STL COLUMN SEE STRUCTURAL DWG'S
3/8" GYP BD
1 3/8" STEEL CHANNEL

HOUR RATINGS FOR 6X6 I-BEAM SHAPE
MN TS 444 x 0.188 1" 5B
MN TS 6X8 x 0.250 5B 0.25

6 COLUMN COVER 1HR RATED DESIGN: UL# X649

STL COLUMN SEE STRUCTURAL DWG'S
INTUMESCENT COATING APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

5 COLUMN COVER 1HR RATED DESIGN: UL# Y614

STL COLUMN SEE STRUCTURAL DWG'S
INTUMESCENT COATING APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

2HR RATINGS FOR ALL LOCATIONS NOTED 3(A) RE: STRUCT. PLANS

3 COLUMN COVER 1HR RATED DESIGN: UL# X271

STL COLUMN SEE STRUCTURAL DWG'S
SPRAY-APPLIED FIRE RESISTIVE MATERIAL APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

2HR RATINGS FOR ALL LOCATIONS NOTED 3(A) RE: STRUCT. PLANS

~~**7 COLUMN COVER 1HR RATED** DESIGN: UL# X271~~

STL COLUMN SEE STRUCTURAL DWG'S
3/8" GYP BD
1 3/8" STEEL CHANNEL

HOUR RATINGS FOR 6X6 I-BEAM SHAPE
MN TS 444 x 0.188 1" 5B
MN TS 6X8 x 0.250 5B 0.25

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STL COLUMN SEE STRUCTURAL DWG'S
INTUMESCENT COATING APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

5 COLUMN COVER 1HR RATED DESIGN: UL# Y614

STL COLUMN SEE STRUCTURAL DWG'S
INTUMESCENT COATING APPLIED TO THICKNESS APPROPRIATE TO COLUMN SIZE AND HOUR RATINGS REQUIRED

2HR RATINGS FOR ALL LOCATIONS NOTED 3(A) RE: STRUCT. PLANS

2 DEFLECTION TRACK

PROVIDE DEFLECTION TRACK AT ALL INTERIOR PARTITIONS COORD WITH STG RATINGS

B O STRUCT
VERTICAL DEFLECTION GAP RE: STRUCT
ATTACH DEEP LEGS TRACK TO STRUCT AS REQ
GAP BETWEEN TRACK AND GYP SH TO DEFLECTION GAP
COLD ROLLED CHANNEL PLACE WITHIN 12" OF SLIP TRACK

1 JUNCTION BOX FLANKING

RATED PARTITIONS: MRAP ALL SIDES OF ELEC/COMM BOX WITH 3# BRAND FIRE BARRIER MPP-45 MOLDABLE PUTTY PAD

JUNCTION BOXES SEPARATED BY METAL STUD

NON-RATED PARTITIONS COVER ALL SIDES OF ELEC/COMM BOX WITH ACOUSTICAL SEALANT

NOTE: STAGGER LOCATION OF ALL OUTLETS SHOWN BACK TO BACK ON ELECTRICAL DWG

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PROVIDE DEFLECTION TRACK AT ALL INTERIOR PARTITIONS COORD WITH STG RATINGS

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VERTICAL DEFLECTION GAP RE: STRUCT
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NON-RATED PARTITIONS COVER ALL SIDES OF ELEC/COMM BOX WITH ACOUSTICAL SEALANT

NOTE: STAGGER LOCATION OF ALL OUTLETS SHOWN BACK TO BACK ON ELECTRICAL DWG

P-8 1/2" FURRED PARTITION 2HR RATED DESIGN: UL# U450 STG: N/A

UNDERSIDE OF STRUCTURE OR CLG
STABILIZERS: SEE STRUCTURAL DWGS
LEAVE SPACE FOR DEFLECTION, FILL GAP WITH FIRE BARRIER CAULK
HORIZONTAL LADDER TIES @ 16" O.C. (VERT.)
3/8" THK. MORTAR BED
CONCRETE BLOCK CLASS D-2
LINE OF STRUCTURE

NOTE: APPLIES TO BEARING AND NON-BEARING PARTITIONS

P-7 PARTIAL HEIGHT PARTITION DESIGN: N/A STG: N/A

UNDERSIDE OF STRUCTURE OR CLG
REINFORCE TOP OF PARTITION AS REQ'D
3 3/8" STL STUDS AT 24" O.C. MAX; 6" STL STUDS AT 24" O.C. MAX @ (B) ONLY
5/8" GYP BD AS SHOWN
PROVIDE REINFORCING AS REQ'D
CONT. STL RUNNER TAB
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE

P-6 PARTITION W/CHASE 1HR RATED DESIGN: UL# U420 STG: N/A

UNDERSIDE OF STRUCTURE OR CEILING
CONT. ACOUSTICAL SEALANT AT PERIMETER APPLIED BEFORE GYP BD
CONT. FIRE BARRIER CAULK AT PERIMETER APPLIED AFTER GYP BD
TEAR AWAY BEAD AT CLG
3 1/2" MAX. BATT INSULATION ONE SIDE AT (A) ONLY
STL RUNNER BRACING AT 48" O.C. MAX
1 5/8" STL STUDS AT 24" O.C. MAX
5/8" CEMENT BACKER UNIT WHERE REQ'D
CONT. STL RUNNER TAB
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE

P-5 1/2" FURRED PARTITION DESIGN: N/A STG: N/A

UNDERSIDE OF STRUCTURE OR CEILING
CONT. ACOUSTICAL SEALANT AT PERIMETER APPLIED BEFORE GYP BD
TEAR AWAY BEAD AT CLG
4" CONTINUOUS RIGID INSULATION
6" STL STUDS AT 24" O.C. MAX
1/8" STL FURRING CHANNELS AT 24" O.C. MAX
5/8" GYP BD AS SHOWN
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE

P-4 1/2" FURRED PARTITION DESIGN: N/A STG: N/A

UNDERSIDE OF STRUCTURE OR CEILING
CONT. ACOUSTICAL SEALANT AT PERIMETER APPLIED BEFORE GYP BD
TEAR AWAY BEAD AT CLG
1 1/2" S&B INSULATION @ (A) ONLY
1 5/8" STL STUDS AT 24" O.C. MAX
5/8" GYP BD AS SHOWN
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE

P-3 1/2" FURRED PARTITION DESIGN: N/A STG: N/A

UNDERSIDE OF STRUCTURE OR CEILING
CONT. ACOUSTICAL SEALANT AT PERIMETER APPLIED BEFORE GYP BD
TEAR AWAY BEAD AT CLG
MULL SURFACE SHIM CHANNELS AS REQ'D
7/8" STL FURRING CHANNELS AT 24" O.C. MAX
5/8" GYP BD AS SHOWN
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE

P-2 SHW/THW 2HR RATED DESIGN: UL# U445 OR U450 STG: 39 (A) 47

UNDERSIDE OF RATED ASSEMBLY
CONT. ACOUSTICAL SEALANT AT PERIMETER APPLIED BEFORE GYP BD
TEAR AWAY BEAD AT CLG
1 1/2" S&B INSULATION AT (A) ONLY
1" THK. GYPSUM LINER PANEL
2 1/2" STL 'C' STUDS AT 24" O.C. MAX
2 LAYERS 1/2" TYPE C GYP BD AS SHOWN
CONT. STL - RUNNER TAB
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE

P-1 PARTITION NON RATED DESIGN: N/A STG: 40 (A) 44

UNDERSIDE OF STRUCTURE OR CLG
CONT. ACOUSTICAL SEALANT AT PERIMETER APPLIED BEFORE GYP BD
TEAR AWAY BEAD AT CLG
3 1/2" S&B INSULATION AT (A) ONLY
3 5/8" STL STUDS AT 24" O.C. MAX
5/8" GYP BD AS SHOWN
CONT. STL RUNNER TAB
FINISH FLOORING - SEE FINISH SCHEDULE
LINE OF STRUCTURE



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ASPEN CITY OFFICES
425 RIO GRANDE PLACE
ASPEN, CO

PARTITIONS TYPES AND DETAILS

ISSUE	DATE
80% DD	10/30/21
100% DD	12/27/21
PERMIT	03/07/22
JOB NO 1432	

SHEET NO
A9.2

Exhibit B - Change to Construction Type IIB_2019-02-13

Exhibit C - Change Pavers to Asphalt

To: Rich Pavcek, Charles Cunniffe Architects

From: Richard Goulding, Roaring Fork Engineering

Date: March 21, 2019

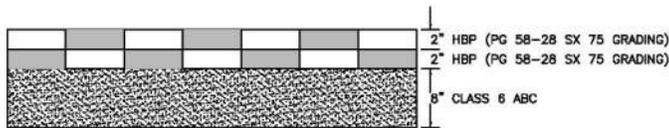
RE: City Offices Phase 1 VE – Pavers to Asphalt

Rich,

If the pervious pavers and concrete pavement are removed and replaced by asphalt the section below could be used as an alternate. I would recommend installing two 2" lifts to provide longevity as trash trucks and other service vehicles will be driving around the loop on a regular basis. The subbase should be scarified and compacted to depth of 12" below the 8" of Class 6 Aggregate Base Course (ABC). Any soft spots should be removed and replaced with ABC.

TYP. ASPH. PAVEMENT SECTION

NOT TO SCALE



With regards to drainage, removing the pervious paver will create additional runoff which will need to be treated for water quality. This can be achieved in the drywell by adding volume. The drywell will change from a 12' deep 4' diameter to a 12' deep 5' diameter drywell.

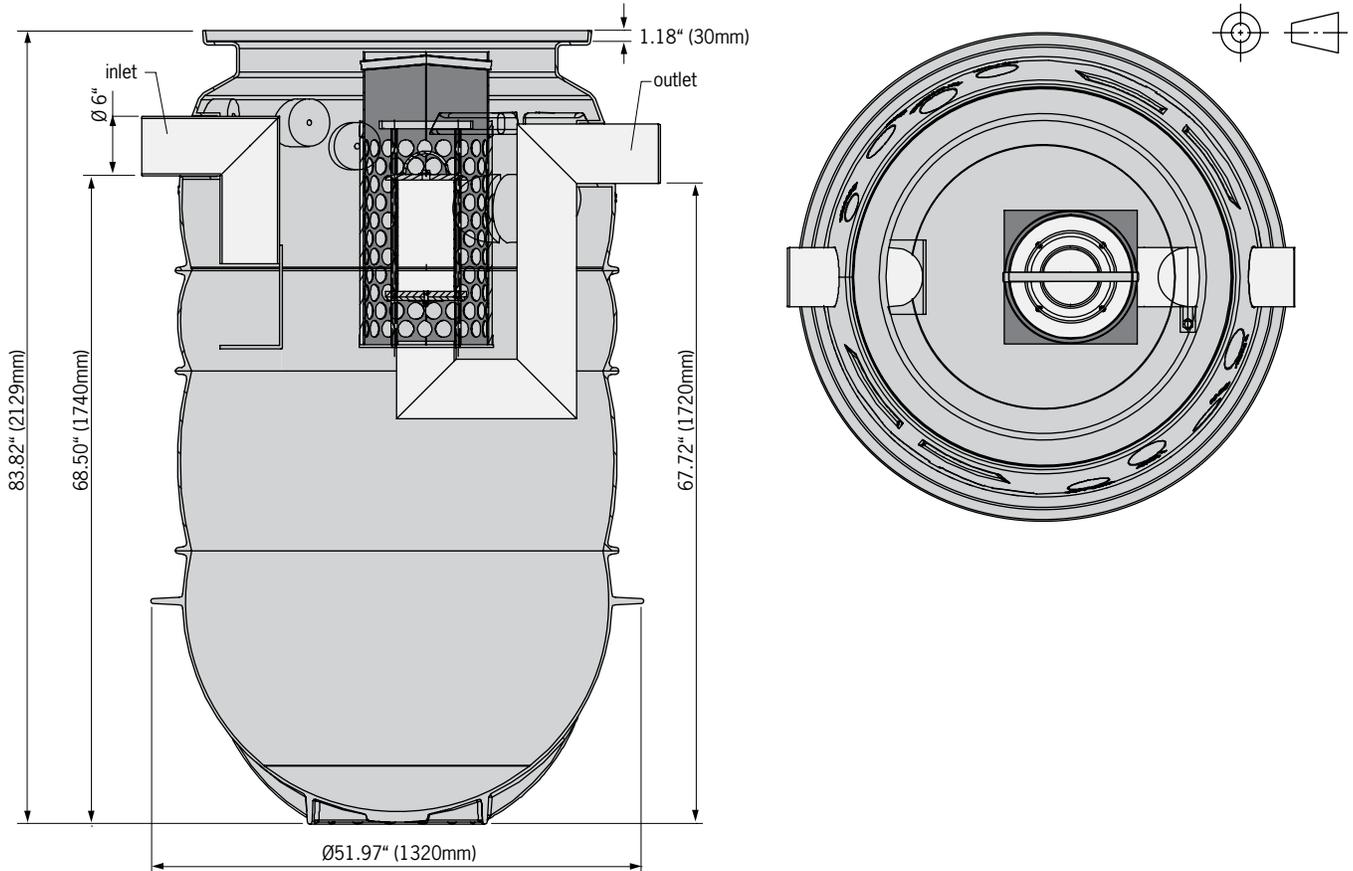
RFE has not spoken to City Engineering about this VE item. There is a possibility that Engineering will request an oil-water separator upstream of the drywell, as there would be no treatment within the parking lot if the pavers are removed. I have attached a product we have used before within City limits.

cc: Danny Stewart, Roaring Fork Engineering

Attachment: ACO oil-water separator

NS10/1080 OLEOPATOR P - MDPE vertical body oil-water separator

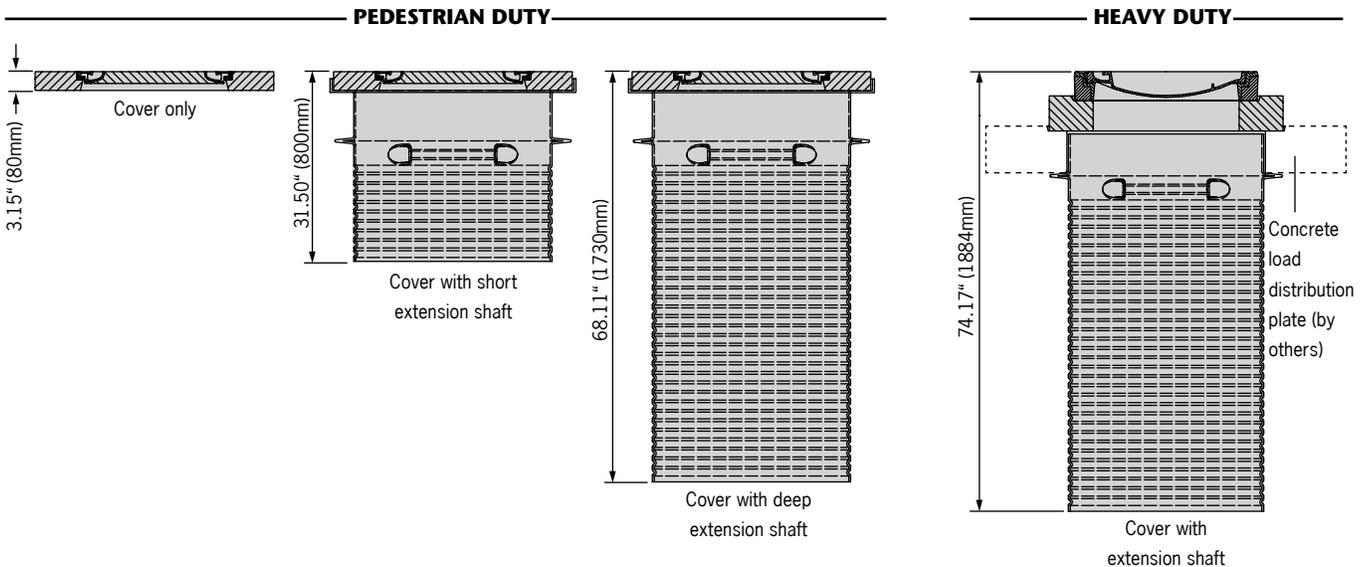
Separator body



Model number	Maximum flow* L/s (gpm)	Volume solids trap L (gal)	Volume oil storage L (gal)	Total capacity L (gal)	Weight lbs	Part No.
NS10/1080	10 (160)	1080 (286)	260 (69)	1615 (427)	231.0	3910.80.00

* Maximum flow indicated is for optimum performance - under 5mg/L hydrocarbons in effluent; higher flows can run through separator

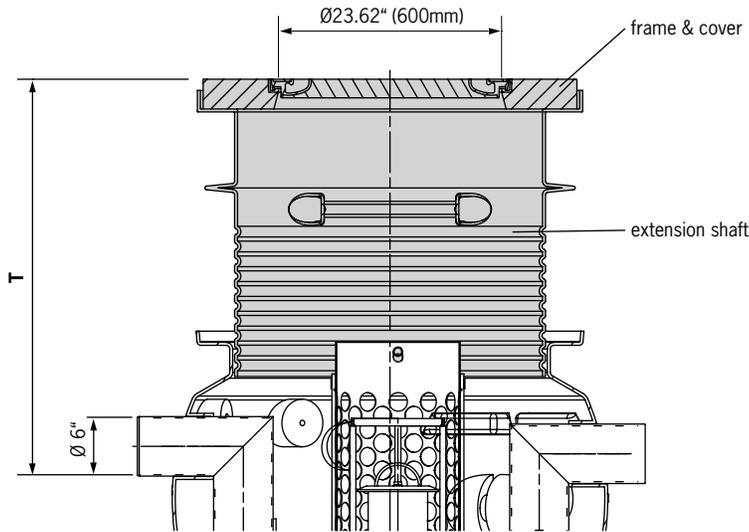
Extension shafts & covers



ACO Specification Information

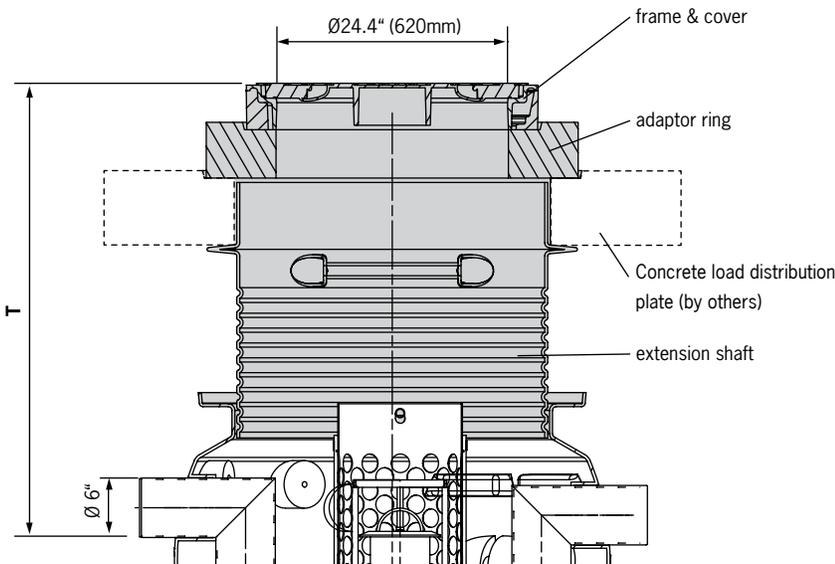
NS10/1080 OLEOPATOR P - MDPE vertical body oil-water separator

Pedestrian Duty Top



	T mm (inches)	Weight lbs	Part No.
Cover only	440 (17.3)	298.0	3301.14.00
Cover & short extension shaft	750-1050 (29.5-41.3)	376.2	3301.14.01
Cover & deep extension shaft	750-1870 (29.5-73.6)	424.8	3301.14.02

Heavy Duty Top



	T mm (inches)	Weight lbs	Part No.
Cover & extension shaft	885-1860 (34.8-73.2)	627.0	3301.17.00

NOTE: 1500mm (59in) diameter x 200mm thick concrete load distribution plate by others

Specifications

General

The oil water separator shall be **ACO Oleopator P NS10/1080** complete with ductile iron cover as manufactured by ACO, Inc.

Materials

The separator body shall be manufactured from medium density polyethylene (MDPE) and have minimum properties as follows:
 Tensile impact strength: 152 ft-lb/in²
 Tensile strength, ultimate: 3,480 psi
 Water absorption 0.01%
 Frost proof, salt proof and fuels and oils resistant

The oil separator shall be equipped with a coalescing unit and automatic shut-off valve for situations when maximum oil capacity is reached. Minimum oil storage capacity shall be 260 Liters (69 gal); minimum suspended solids storage capacity shall be 1080 Liters (286 gal). Separator shall be resistant to uplift forces from underground water up to finished grade water table level. The oil separator should not require a concrete surround.

Performance

The effluent water should contain maximum 5mg/L (5ppm) for maximum designed flow. Independent performance testing should be available on request.

Cover

Cover shall be manufactured from ductile iron to ASTM A 536-84 – Grade 65-45-12 and have a minimum inside opening diameter of 600mm (24in). The cover should be marked 'Separator' on the top. The cover shall be capable of withstanding pedestrian / heavy vehicle traffic*.

Distance from finished grade to inlet pipe invert (T) shall be . . . mm (. . . in). (see tables for values).

Accessories

The separator shall be equipped with high liquid level alarm / maximum oil capacity alarm / maximum suspended solids capacity alarm** systems.

Installation

Separator shall be installed in strict accordance with the manufacturer's installation instructions and recommendations.

* Choose one / ** Choose none, one or more

ACO Specification Information

ACO, Inc.
Northeast Sales Office
 9470 Pinecone Drive
 Mentor, OH 44060
 Tel: (440) 639-7230
 Toll free: (800) 543-4764
 Fax: (440) 639-7235

West Sales Office
 825 W. Beechcraft St.
 Casa Grande, AZ 85122
 Tel: (520) 421-9988
 Toll Free: (888) 490-9552
 Fax: (520) 421-9899

Southeast Sales Office
 4211 Pleasant Road
 Fort Mill, SC 29708
 Toll free: (800) 543-4764
 Fax: (803) 802-1063

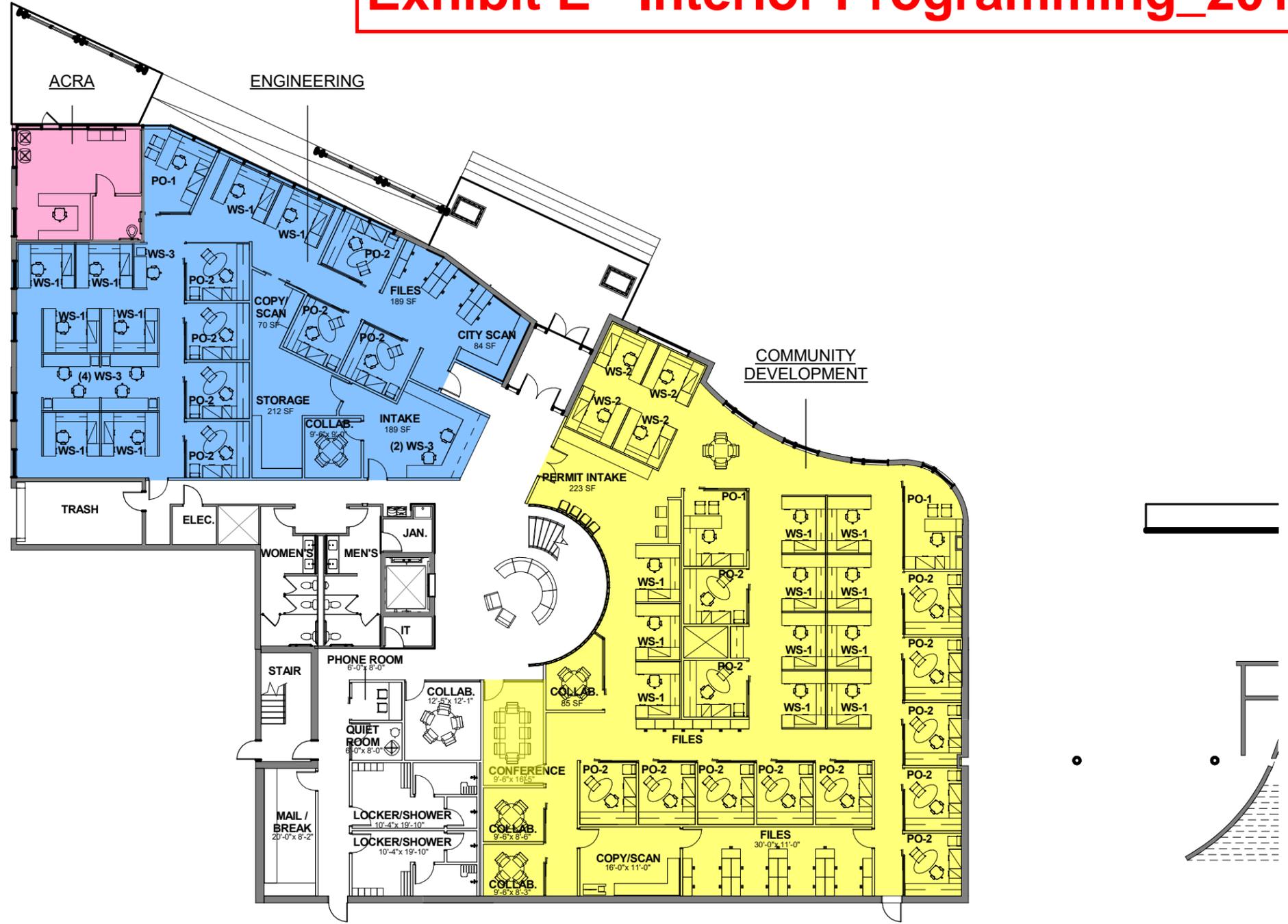


Electronic Contact:
 info@acousa.com
 www.acousa.com



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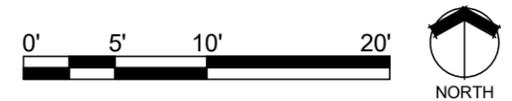
Exhibit E - Interior Programming_2019-03-28



GALENA PROGRAMMING - LEVEL 01

- ACRA
- ENGINEERING
- COMMUNITY DEVELOPMENT

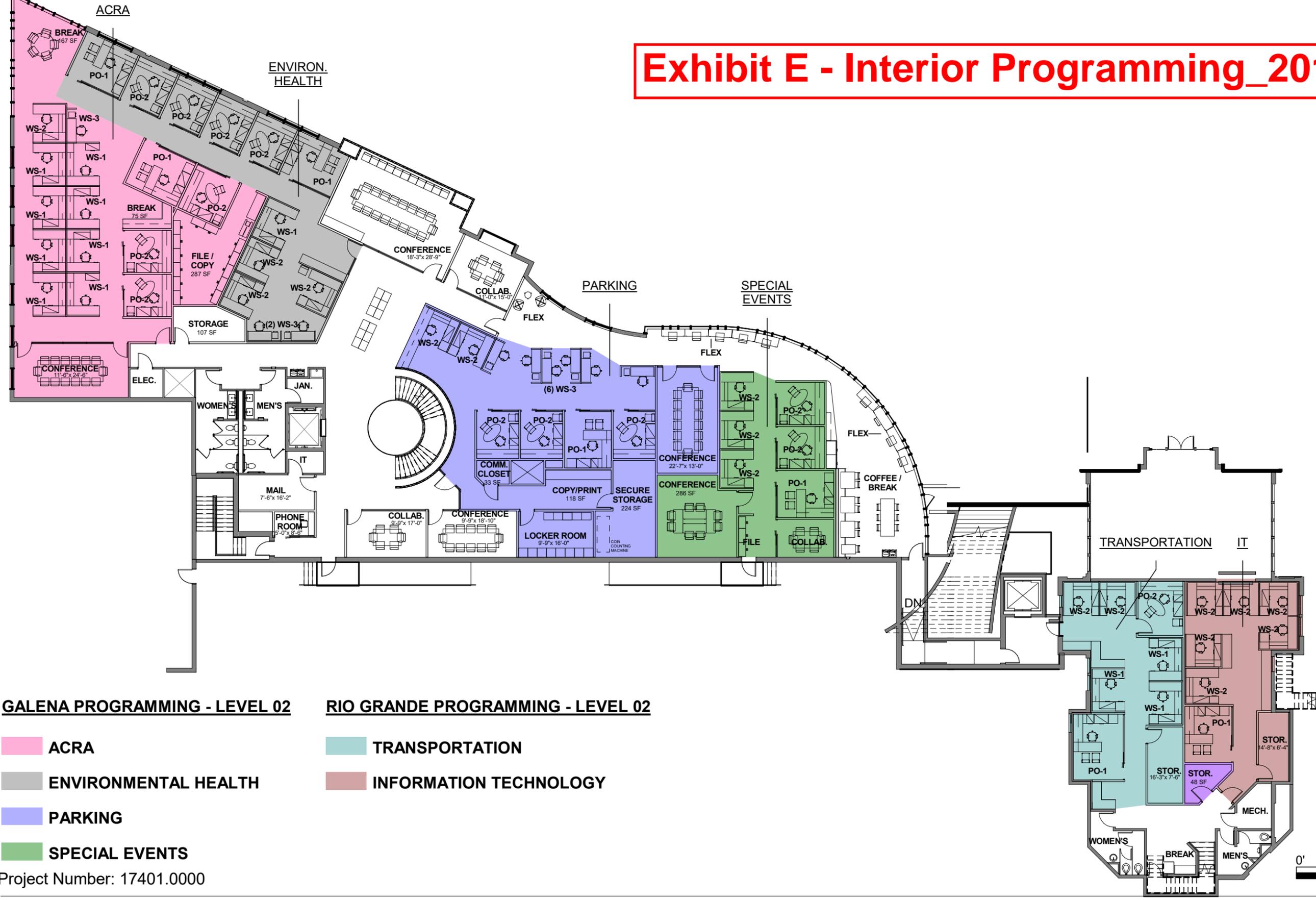
Project Number: 17401.0000



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Exhibit E - Interior Programming_2019-03-28



GALENA PROGRAMMING - LEVEL 02

- ACRA
- ENVIRONMENTAL HEALTH
- PARKING
- SPECIAL EVENTS

RIO GRANDE PROGRAMMING - LEVEL 02

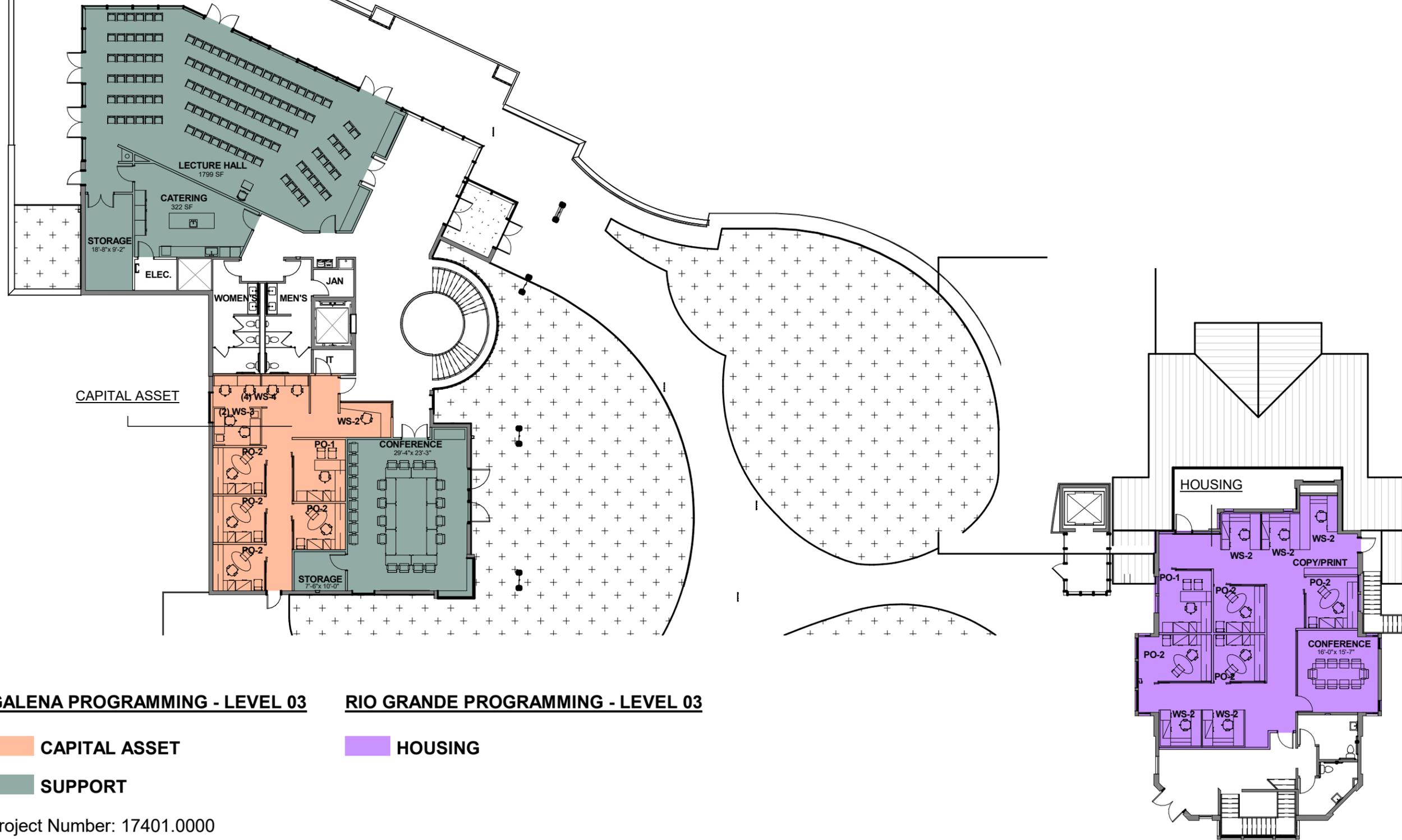
- TRANSPORTATION
- INFORMATION TECHNOLOGY

Project Number: 17401.0000

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Exhibit E - Interior Programming_2019-03-28



GALENA PROGRAMMING - LEVEL 03

RIO GRANDE PROGRAMMING - LEVEL 03

CAPITAL ASSET

HOUSING

SUPPORT

Project Number: 17401.0000

FLOOR PLAN - LEVEL THREE - PROGRAMMING

01.22.2018

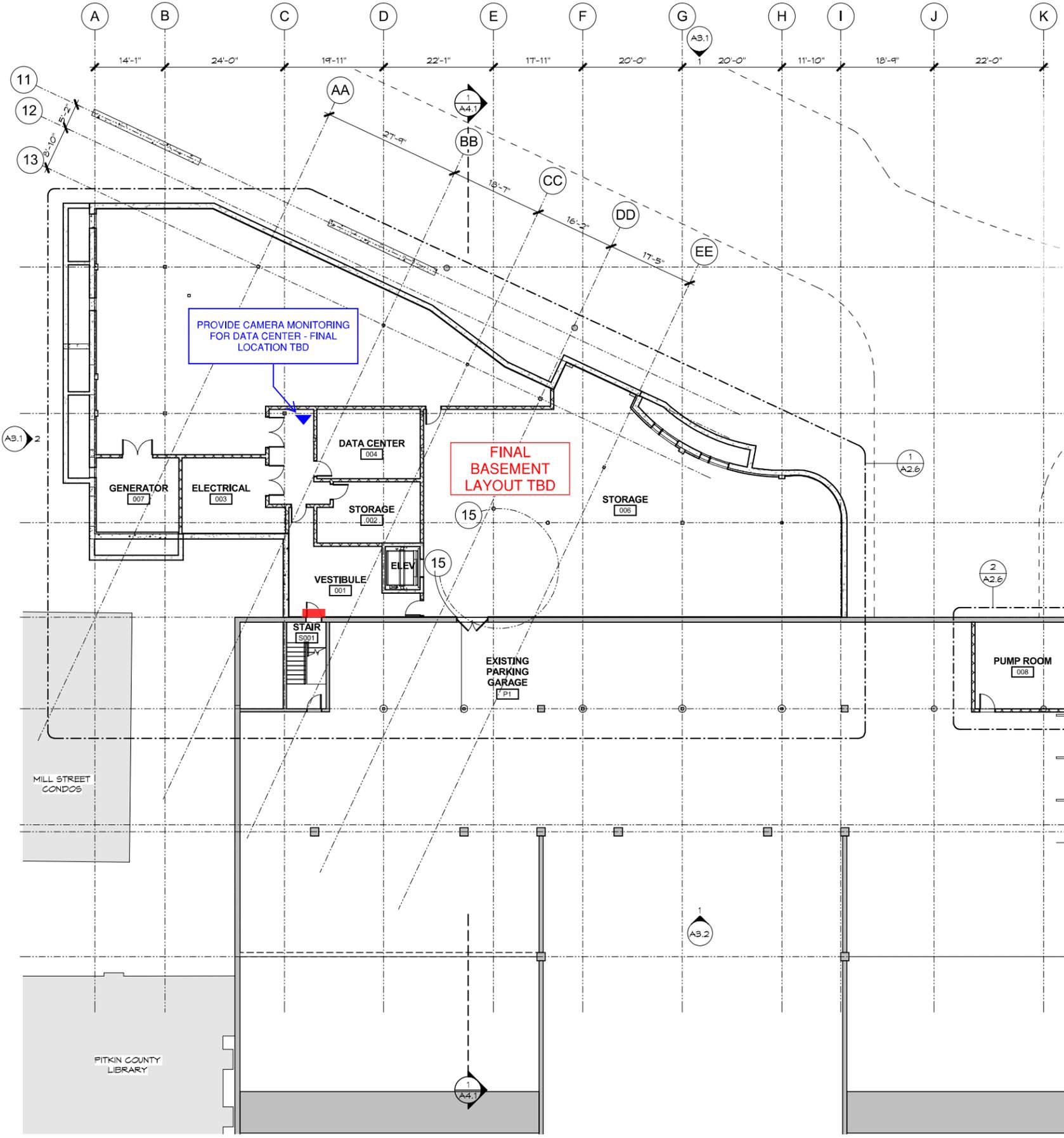
LEGEND	
	DOOR WITH SECURITY ACCESS SYSTEM - (1) LOCATION THIS LEVEL
	VIDEO CAMERA LOCATION - (1) LOCATION THIS LEVEL
	CONFERENCE SPACE WITH LOCAL VIDEO FUNCTION - (0) LOCATIONS THIS LEVEL
	CONFERENCE SPACE WITH FULL AUDIO AND VIDE CONFERENCING FUNCTIONS - (0) LOCATION THIS LEVEL



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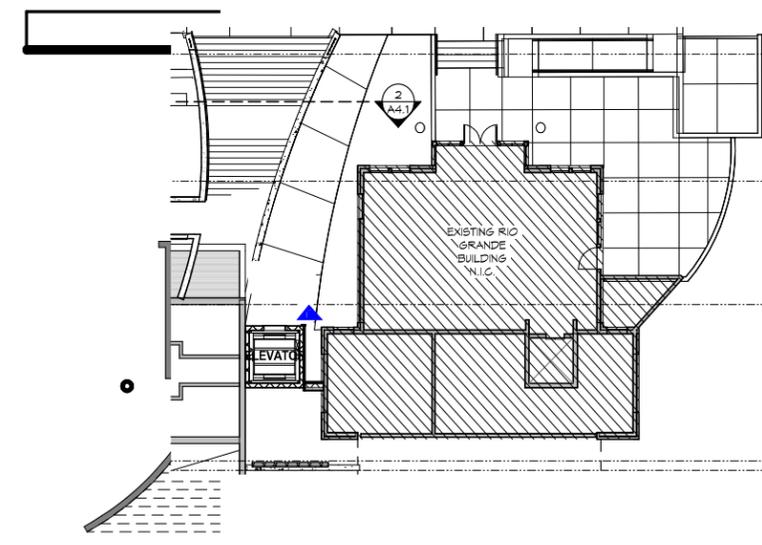
ASPEN CITY OFFICES
425 RIO GRANDE PLACE
ASPEN, CO

Exhibit F - Technology Locates_2019-03-29

SHEET NO.
A2.1



LEGEND	
	DOOR WITH SECURITY ACCESS SYSTEM - (12) LOCATIONS THIS LEVEL
	VIDEO CAMERA LOCATION - (6) LOCATIONS THIS LEVEL
	CONFERENCE SPACE WITH LOCAL VIDEO FUNCTION - (5) LOCATIONS THIS LEVEL
	CONFERENCE SPACE WITH FULL AUDIO AND VIDEO CONFERENCING FUNCTIONS - (1) LOCATION THIS LEVEL

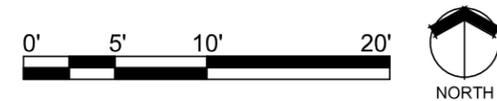


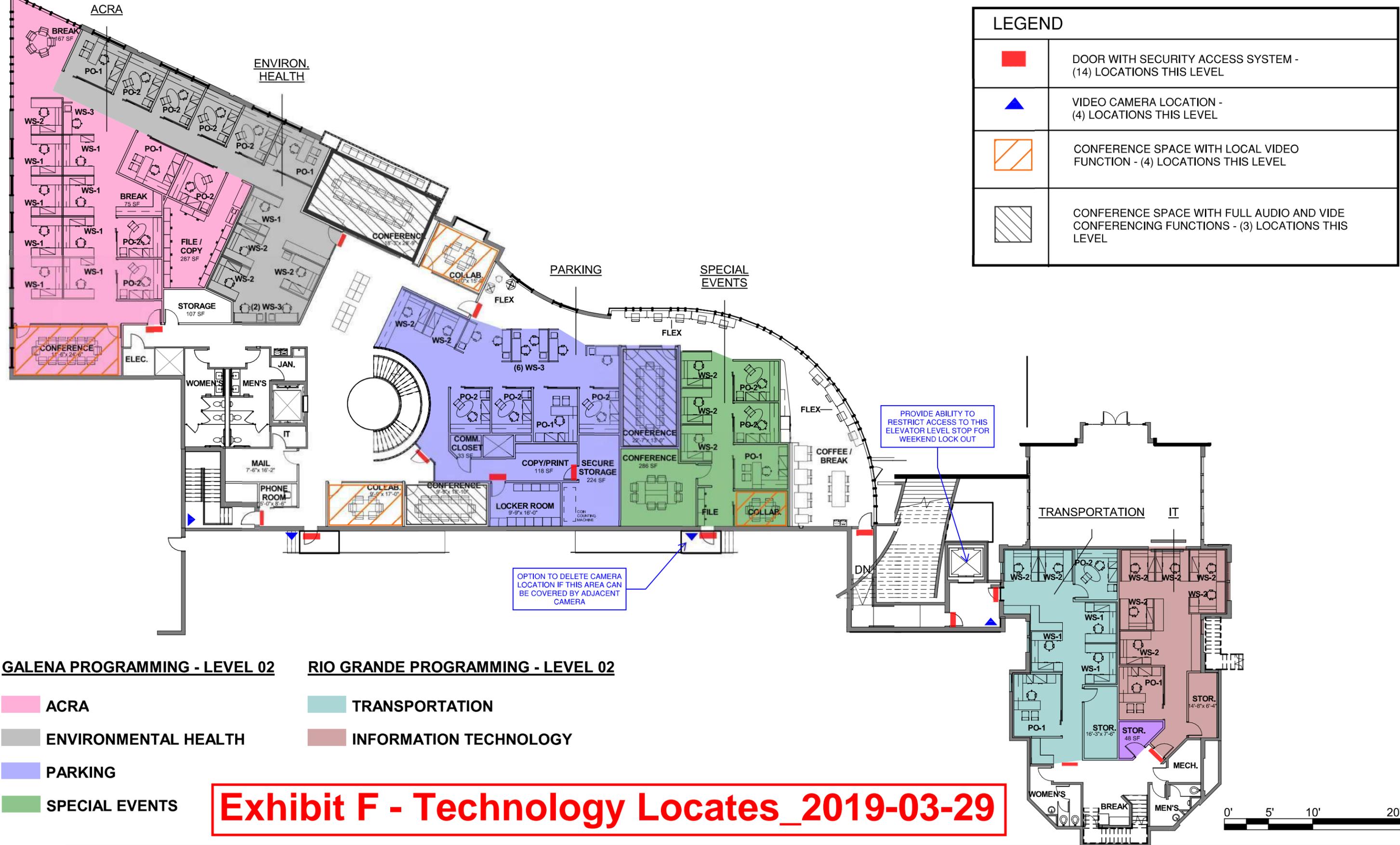
GALENA PROGRAMMING - LEVEL 01

-  ACRA
-  ENGINEERING
-  COMMUNITY DEVELOPMENT

OPTION TO DELETE CAMERA LOCATION IF THIS AREA CAN BE COVERED BY ADJACENT CAMERA

Exhibit F - Technology Locates_2019-03-29





GALENA PROGRAMMING - LEVEL 02

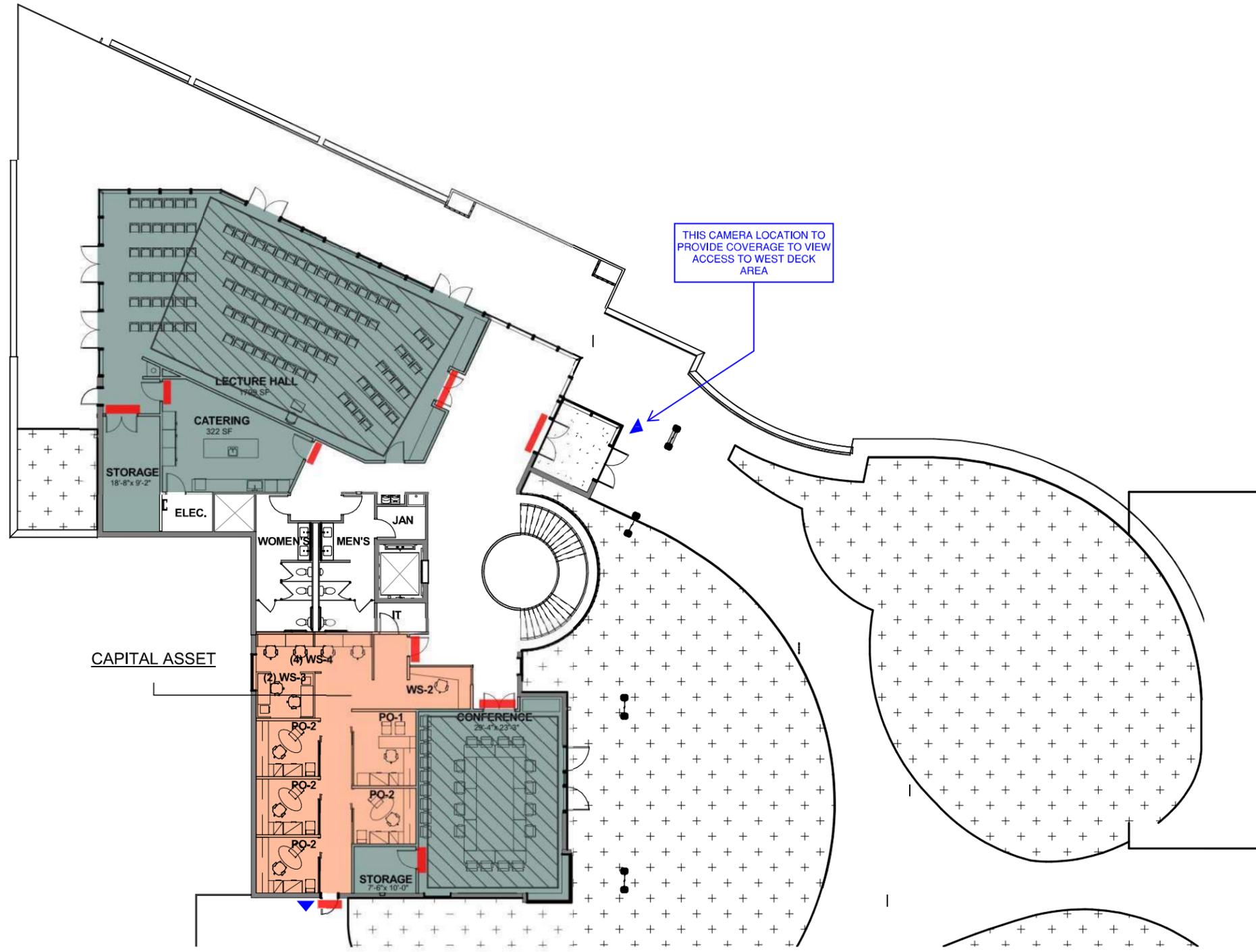
RIO GRANDE PROGRAMMING - LEVEL 02

- ACRA
- ENVIRONMENTAL HEALTH
- PARKING
- SPECIAL EVENTS

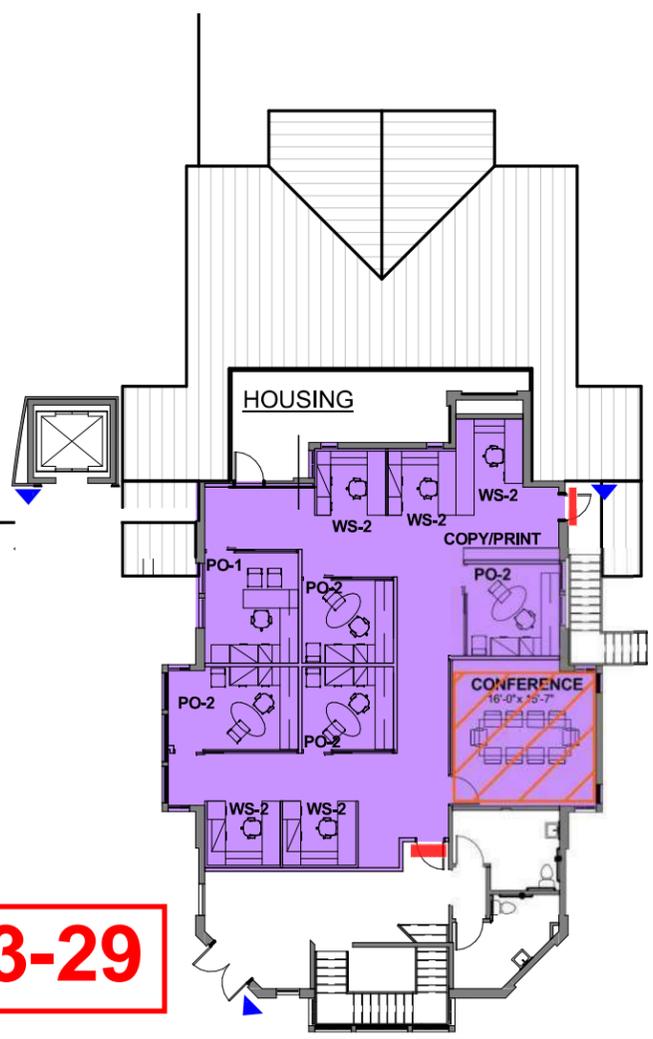
- TRANSPORTATION
- INFORMATION TECHNOLOGY

Exhibit F - Technology Locates_2019-03-29

FLOOR PLAN - LEVEL TWO - TECHNOLOGY LOCATES



LEGEND	
	DOOR WITH SECURITY ACCESS SYSTEM - (11) LOCATIONS THIS LEVEL
	VIDEO CAMERA LOCATION - (5) LOCATIONS THIS LEVEL
	CONFERENCE SPACE WITH LOCAL VIDEO FUNCTION - (1) LOCATION THIS LEVEL
	CONFERENCE SPACE WITH FULL AUDIO AND VIDE CONFERRING FUNCTIONS - (2) LOCATIONS THIS LEVEL



GALENA PROGRAMMING - LEVEL 03 **RIO GRANDE PROGRAMMING - LEVEL 03**

 CAPITAL ASSET  HOUSING
 SUPPORT

Exhibit F - Technology Locates_2019-03-29

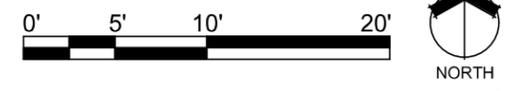
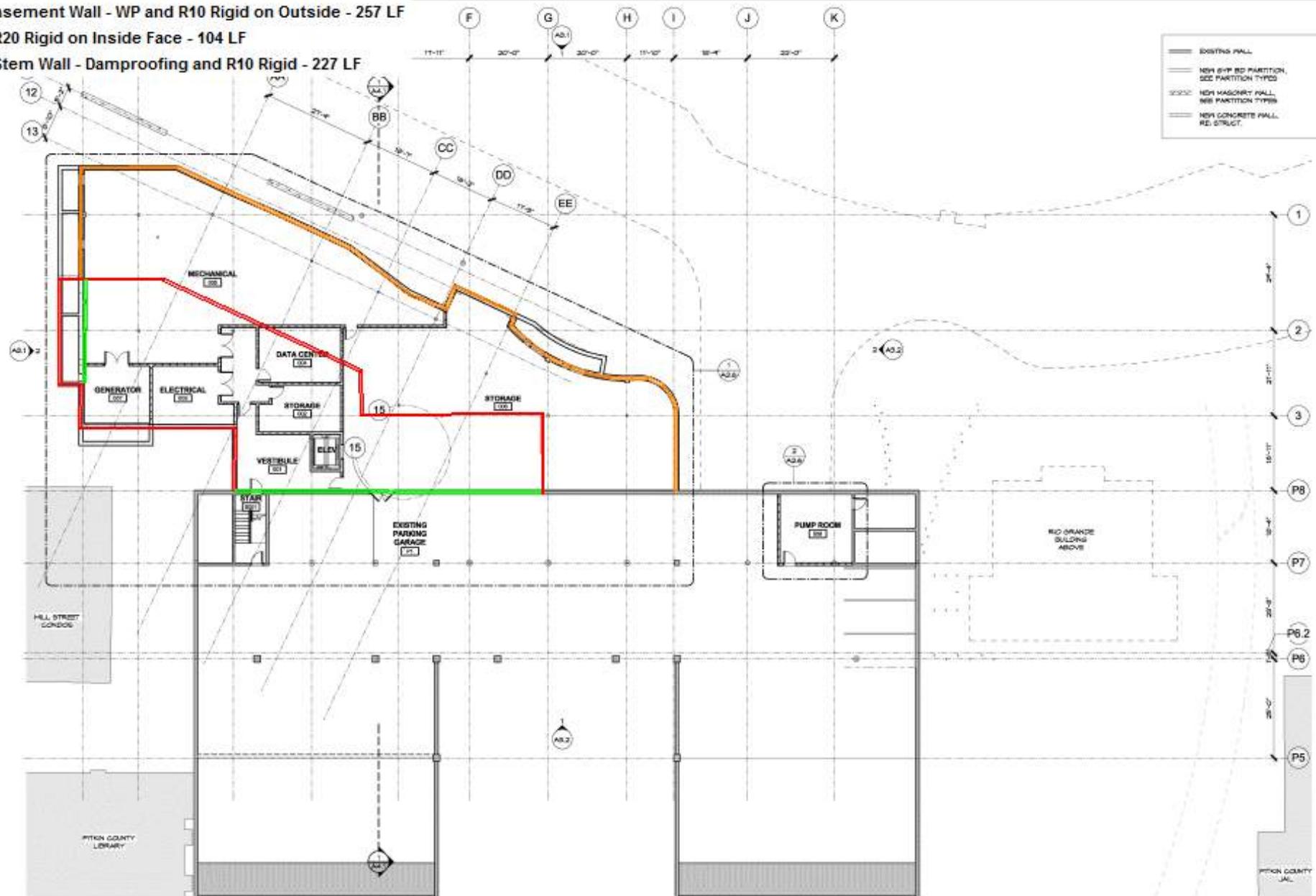


Exhibit H - Exterior WP and Insulation

- 7 - Basement Wall - WP and R10 Rigid on Outside - 257 LF
- 21 - R20 Rigid on Inside Face - 104 LF
- 22 - Stem Wall - Damproofing and R10 Rigid - 227 LF



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ASPEN, CO

LOWER LEVEL -
REFERENCE
FLOOR PLAN

ISSUE	DATE
ISSUED	10/26/17
REVISED	10/27/17
REVISED	11/07/17
REVISED	11/07/17

JOB NO. 1432

SHEET NO.
A2.1

1 LOWER LEVEL REFERENCE PLAN
3/8" = 1'-0"



Exhibit H - Exterior WP and Insulation

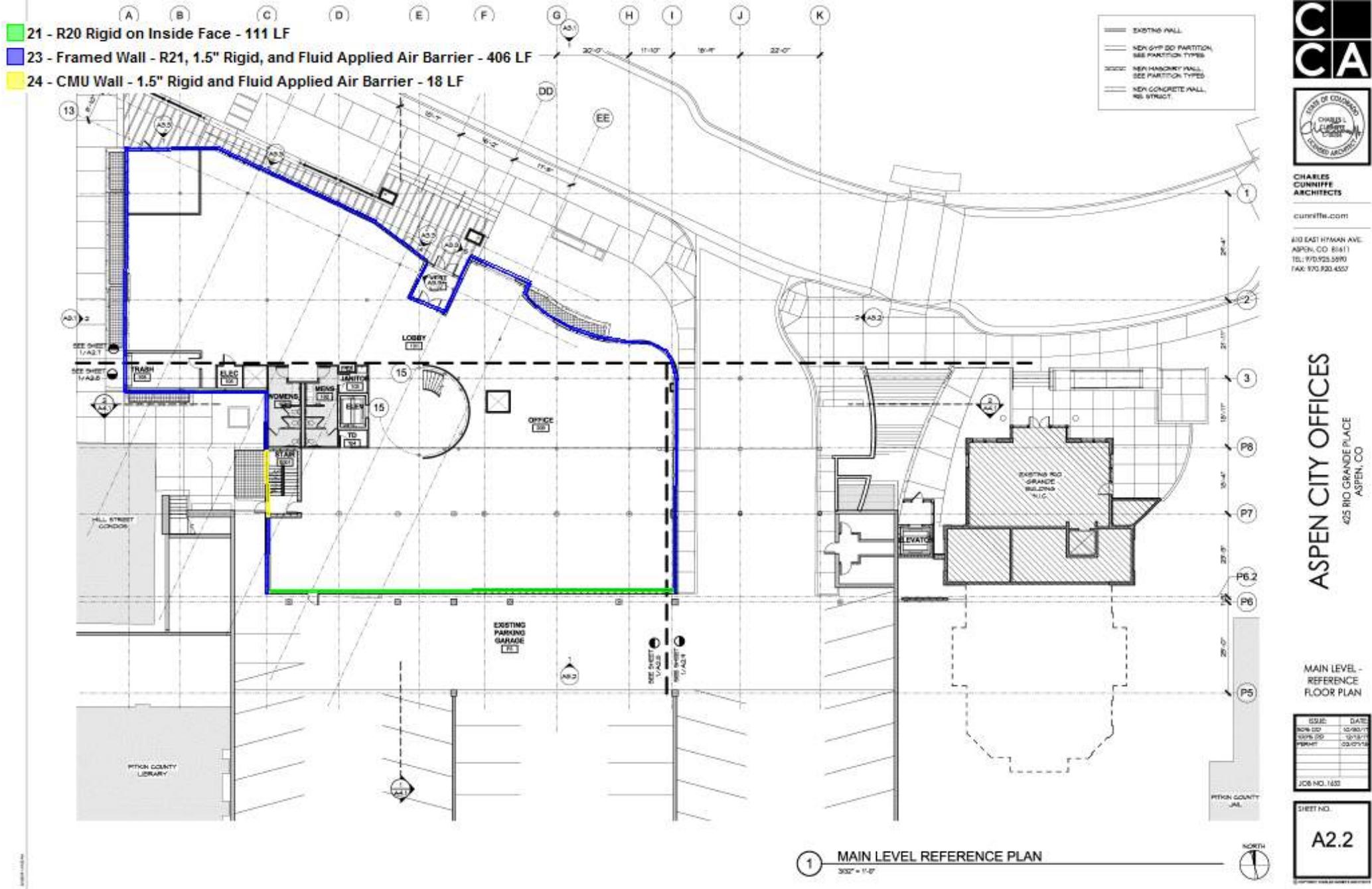


Exhibit H - Exterior WP and Insulation

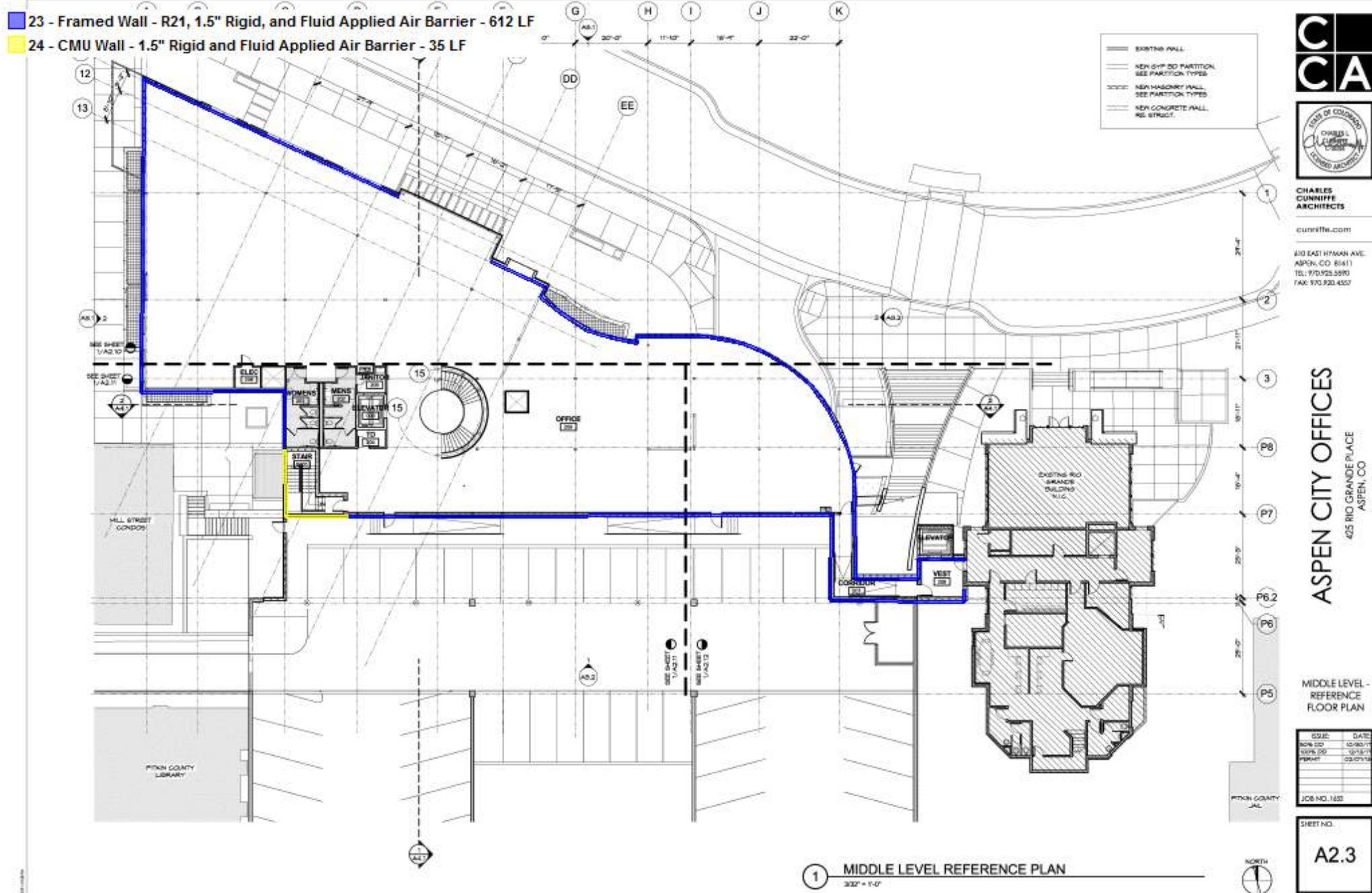


Exhibit H - Exterior WP and Insulation

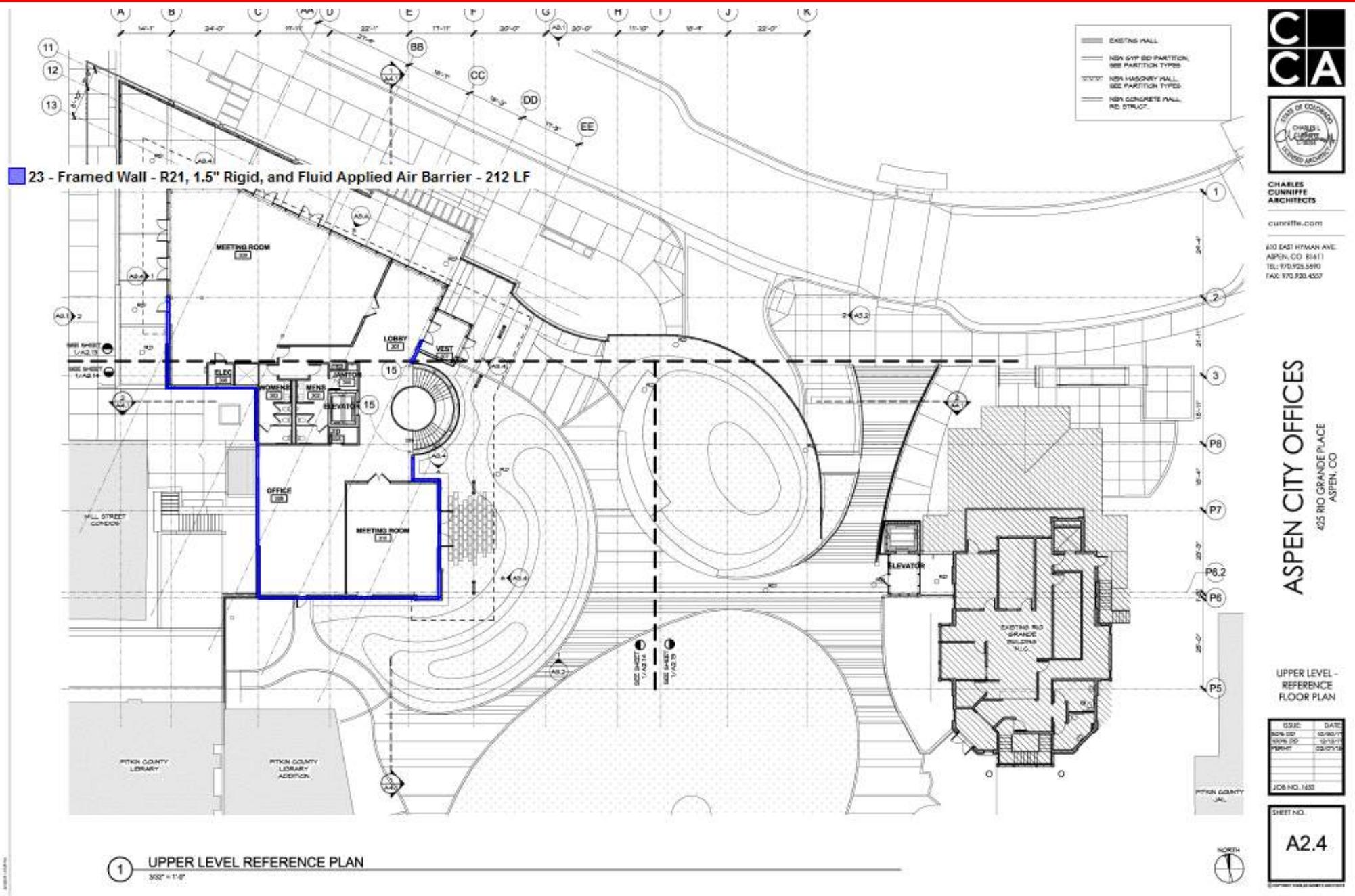
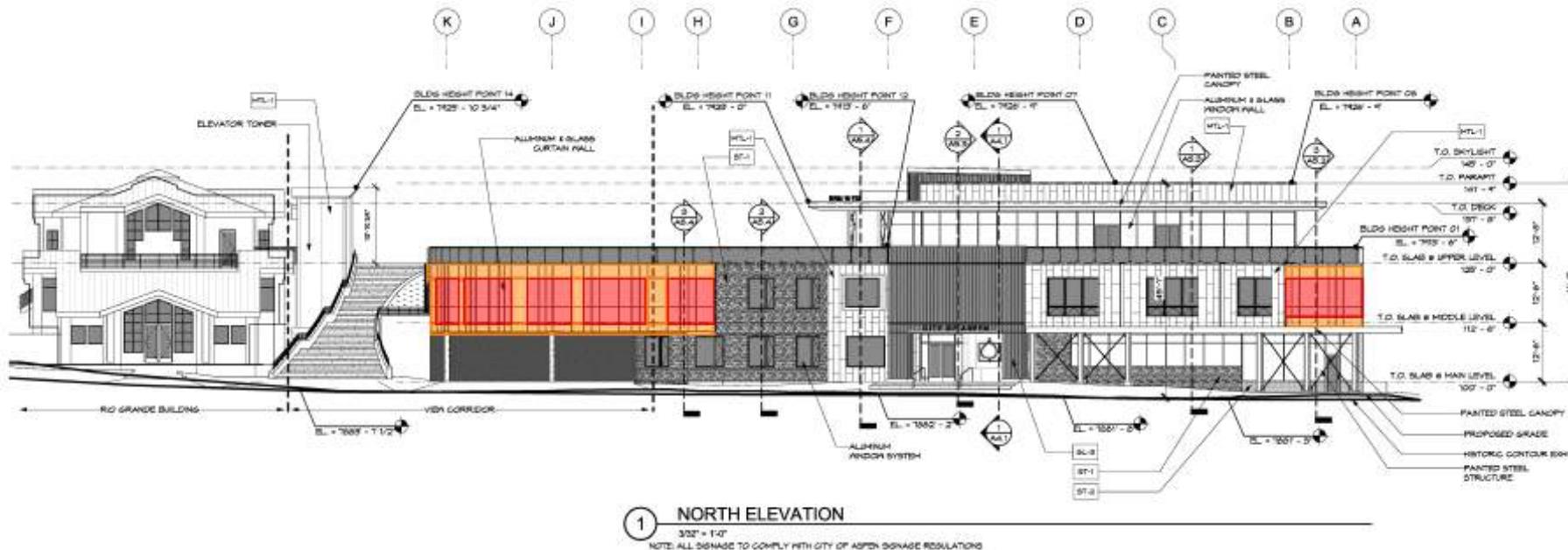
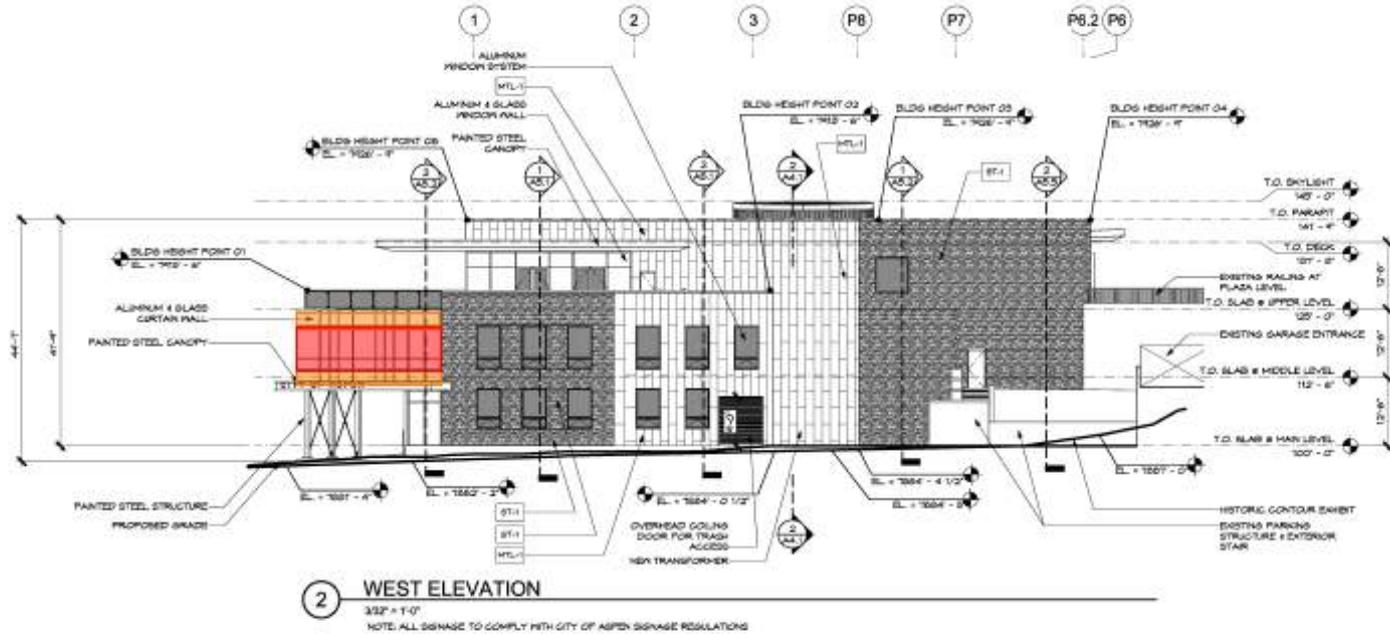


Exhibit I - Storefront and RustWall

- 5 - Additional RustWall Locations
- 20 - Modified Storefront Locations



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ASPEN CITY OFFICES
405 RIO GRANDE PLACE
ASPEN, CO

EXTERIOR ELEVATIONS

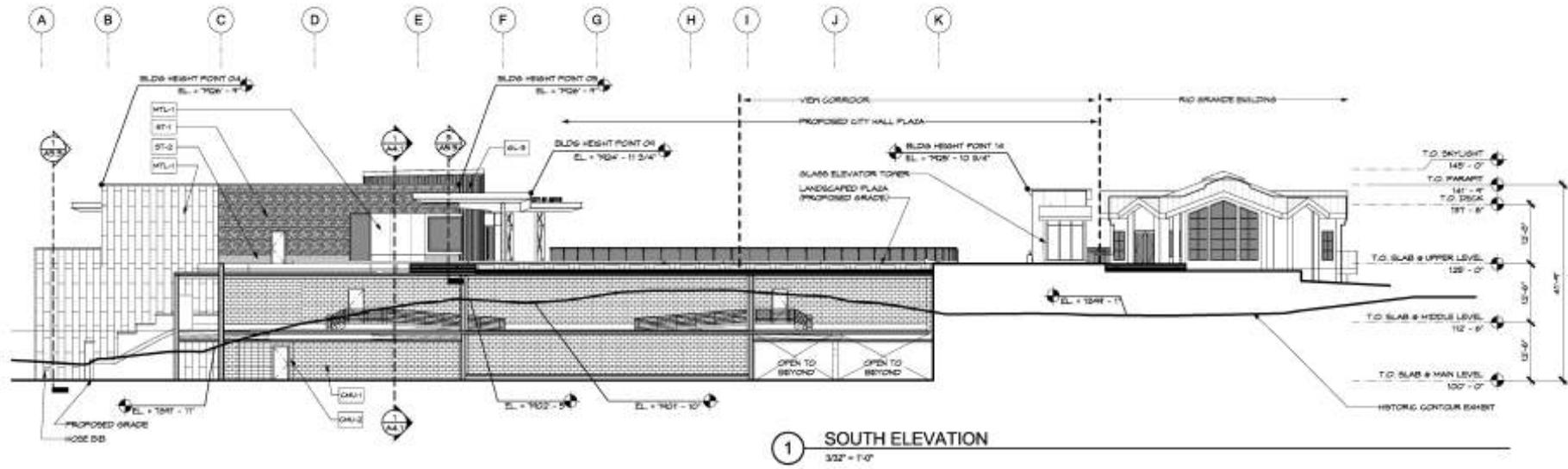
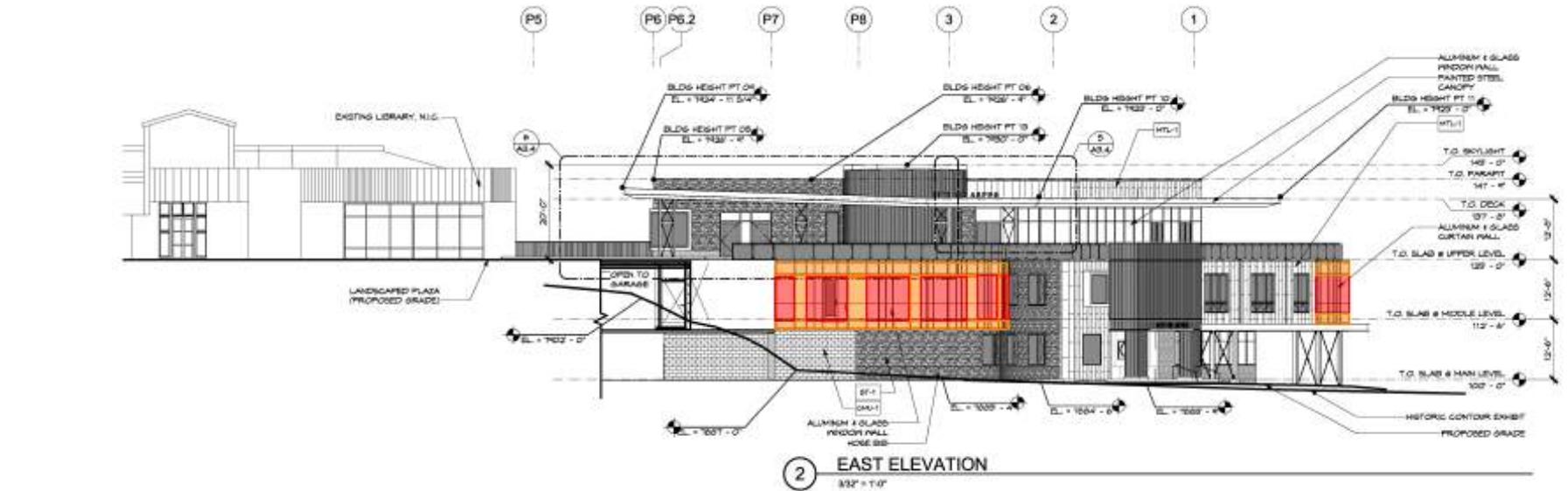
DATE	DATE
REVISED	12/20/17
ISSUED	12/13/17
PERMIT	03/07/18
REVISION	03/08/18

JOB NO. 1433

SHEET NO.
A3.1

Exhibit I - Storefront and RustWall

- 5 - Additional RustWall Locations
- 20 - Modified Storefront Locations



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ASPEN CITY OFFICES
425 RIO GRANDE PLACE
ASPEN, CO

EXTERIOR ELEVATIONS

DATE	DATE
02/01/11	02/01/11
02/01/11	02/01/11
02/01/11	02/01/11
02/01/11	02/01/11

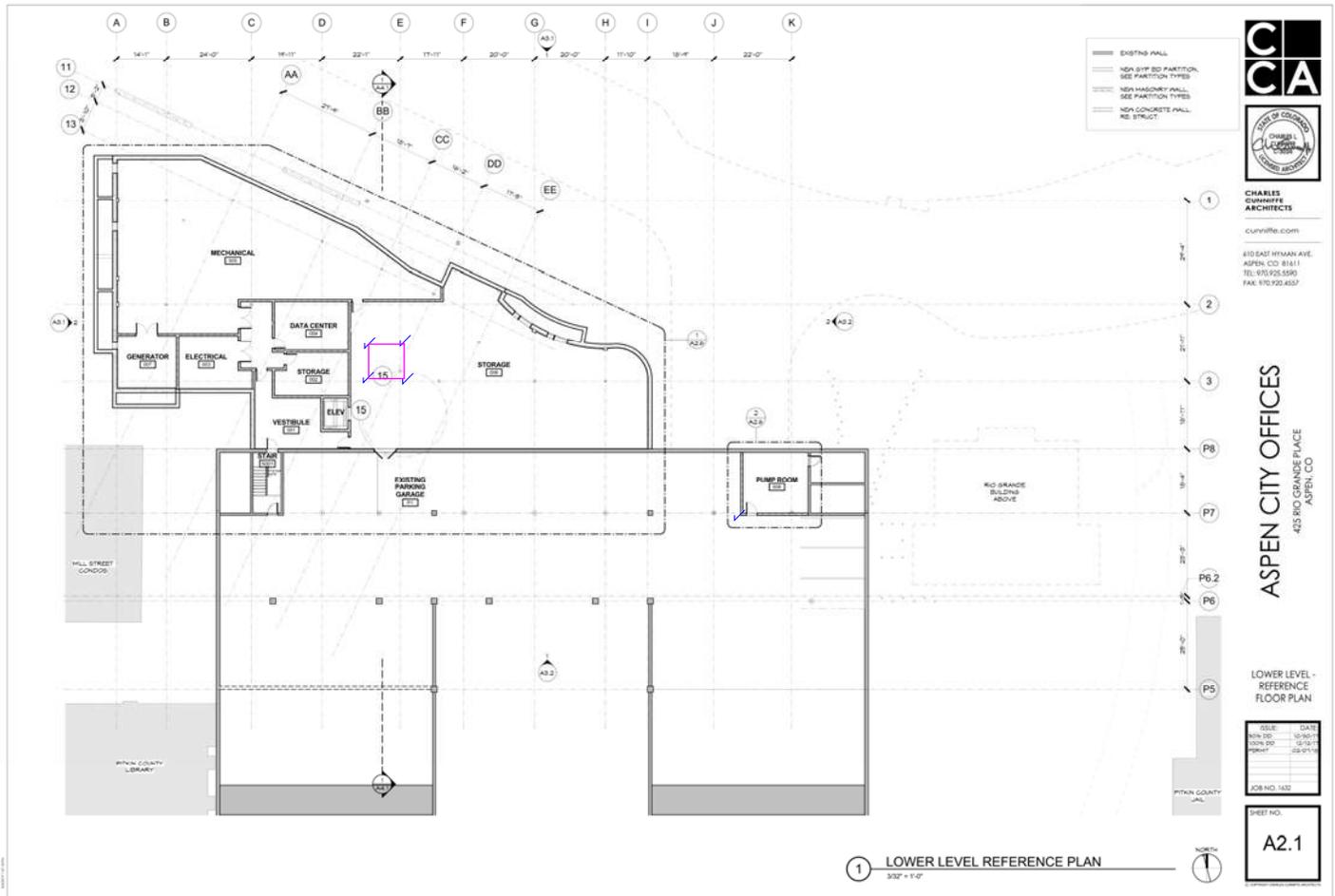
JCS NO. 1633

SHEET NO.
A3.2

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.1 Level 0 Floor Plan

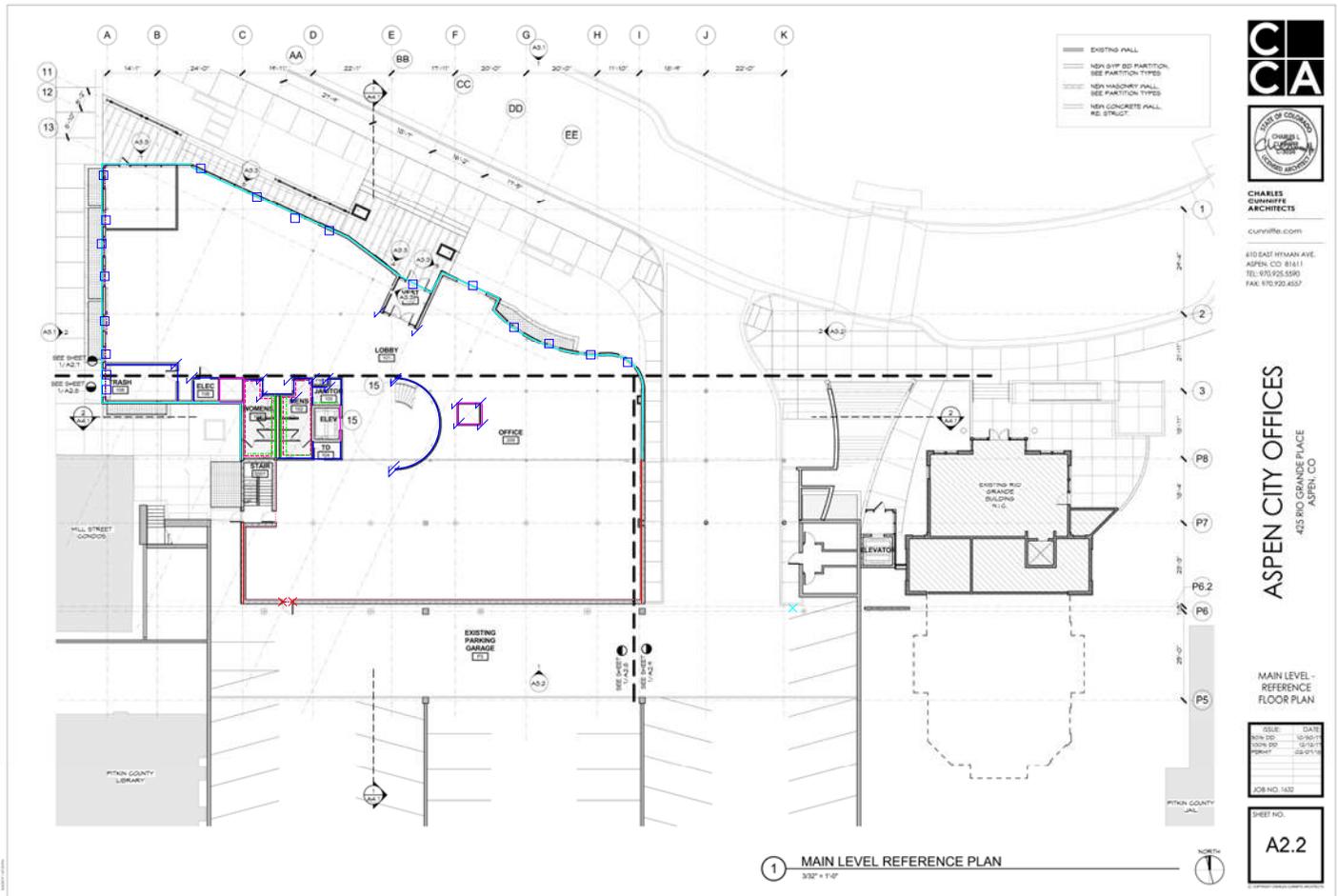


Legend	Pitch	Description	SF	LF	EA
		Corner Bead			5.00
		Shaft Wall		39.55	4.00
		Cement Board Over Rigid at W-1 Wall		450.00	0.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.2 Level 1 Floor Plan



Legend	Pitch	Description	SF	LF	EA
		Typical Interior 3 5/8" Wall		164.86	18.00
		Box Header		71.63	8.00
		Typical Interior 2 1/2" Fur Out Wall		148.58	4.00
		Exterior Wall to 12'-6"		322.37	11.00
		Exterior Wall to 12'-6" - Double Layer I		63.55	2.00
		Tile Backer Swapout to 8'		113.43	12.00
		Shaft Wall		62.33	9.00
		Bathroom Chase Wall		35.29	2.00
		Corner Bead			19.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.2 Level 1 Floor Plan

Legend	Pitch	Description	SF	LF	EA
		Window Returns			18.00
		6" 18 ga Strapping		55.19	5.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.2 Level 1 Floor Plan - Interior Buildout



GALENA PROGRAMMING - LEVEL 01

- ACRA
- ENGINEERING
- COMMUNITY DEVELOPMENT

Project Number: 17401.0000



FLOOR PLAN - LEVEL ONE - PROGRAMMING

01.22.2018



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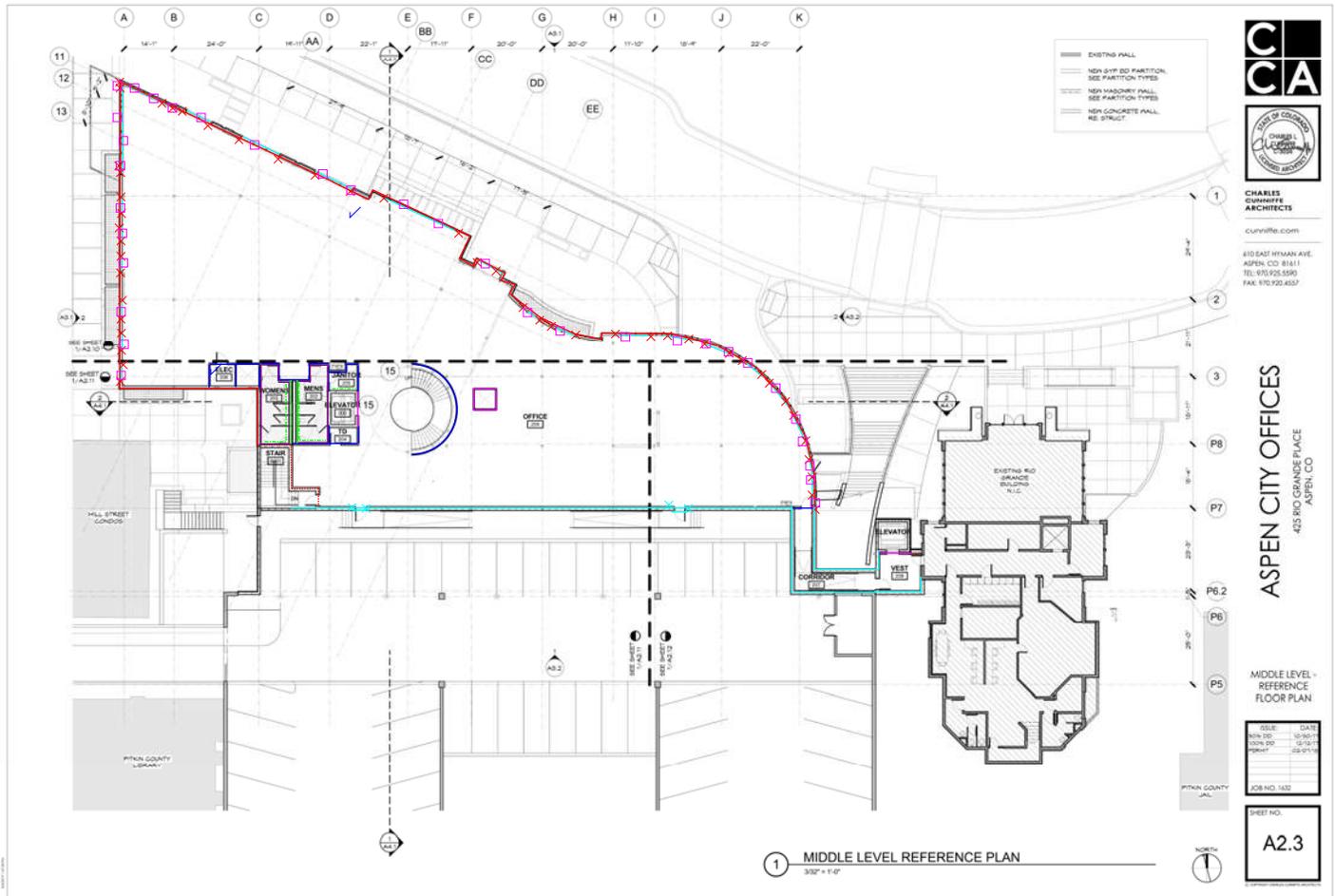
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Legend	Pitch	Description	SF	LF	EA
		Typical Interior 3 5/8" Wall		559.86	34.00
		Typical Interior 1/2 Height Wall		12.25	1.00
		Tile Backer Swapout to 8'		192.16	22.00
		Corner Bead			10.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.3 Level 2 Floor Plan



Legend	Pitch	Description	SF	LF	EA
		Typical Interior 3 5/8" Wall		160.76	20.00
		Box Header		217.60	25.00
		Typical Interior 2 1/2" Fur Out Wall		36.15	5.00
		Exterior Wall to 12'-6"		410.11	27.00
		Exterior Wall to 12'-6" - Double Layer I		247.78	8.00
		Tile Backer Swapout to 8'		121.02	12.00
		Shaft Wall		43.94	6.00
		Bathroom Chase Wall		35.94	2.00
		Corner Bead			2.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

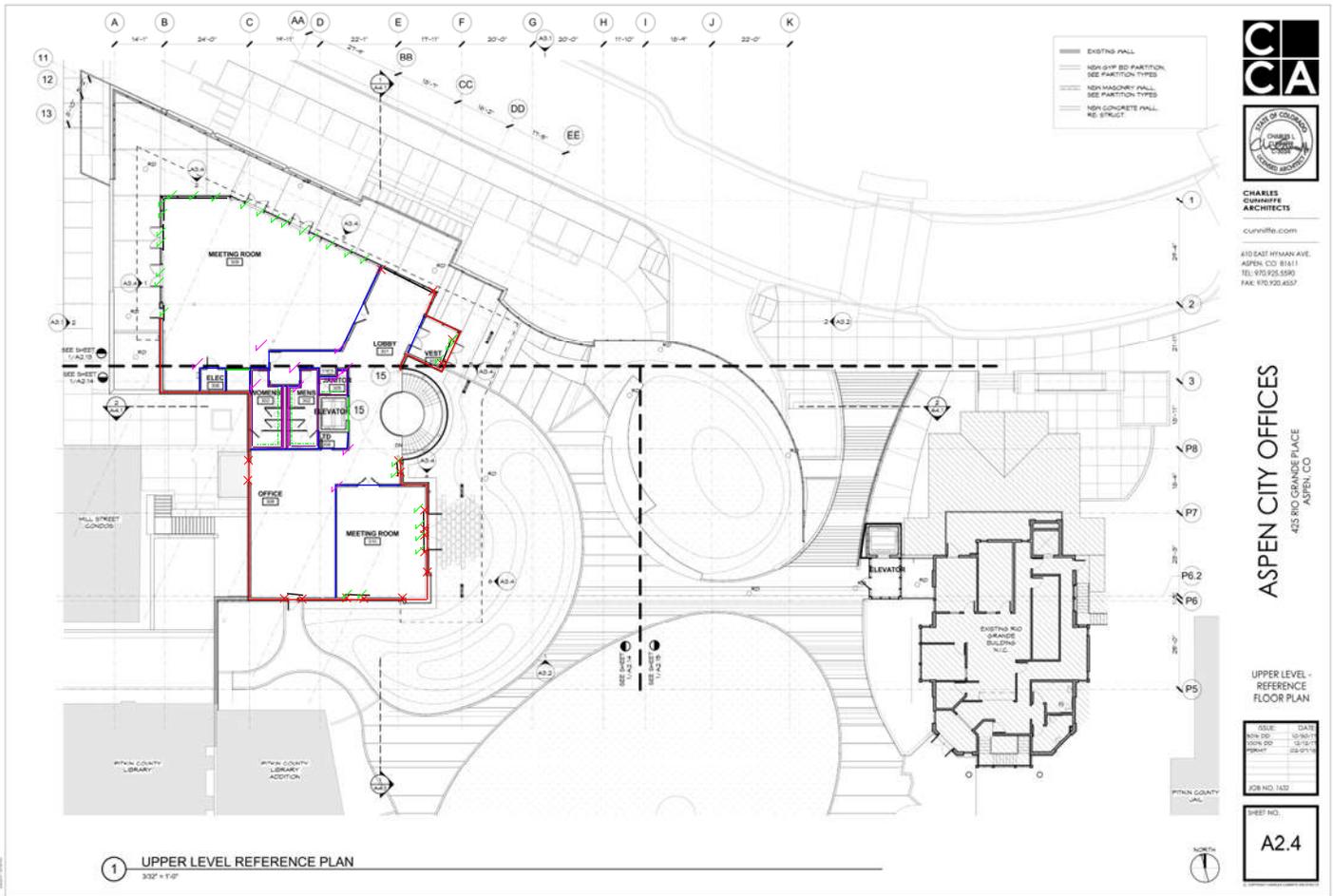
Section: Entire Job
Page: A2.3 Level 2 Floor Plan

Legend	Pitch	Description	SF	LF	EA
		Window Returns			33.00
		6" 18 ga Strapping		53.27	5.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.4 Level 3 Floor Plan

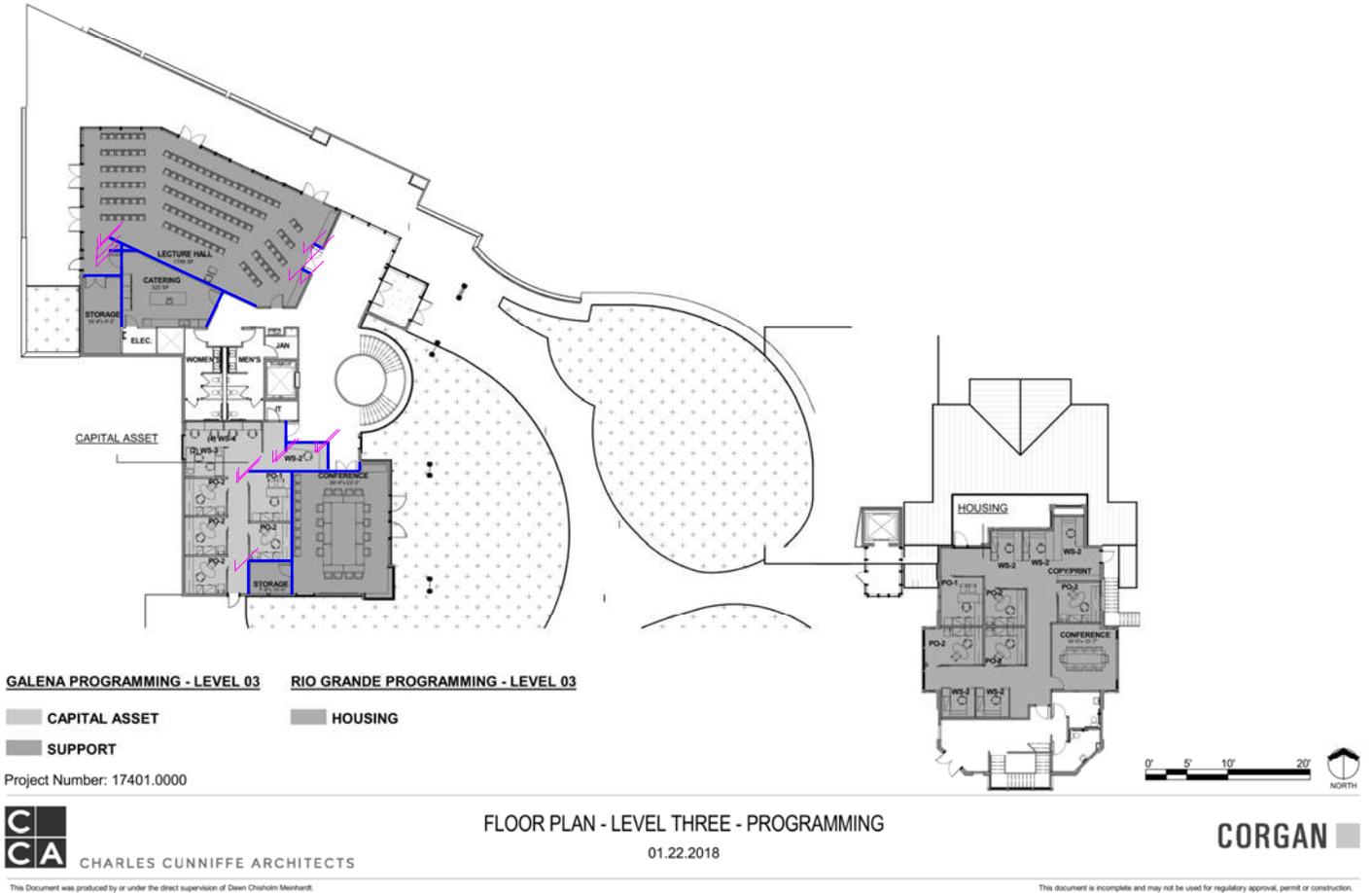


Legend	Pitch	Description	SF	LF	EA
█		Typical Interior 3 5/8" Wall		234.05	23.00
█		Box Header		85.68	10.00
█		Exterior Wall to 12'-6"		249.26	13.00
█		Tile Backer Swapout to 8'		145.19	18.00
█		Shaft Wall		16.52	2.00
█		Bathroom Chase Wall		35.78	2.00
↗		Corner Bead			10.00
↗		Window Returns			30.00
█		6" 18 ga Strapping		50.04	5.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.4 Level 3 - Interior Buildout

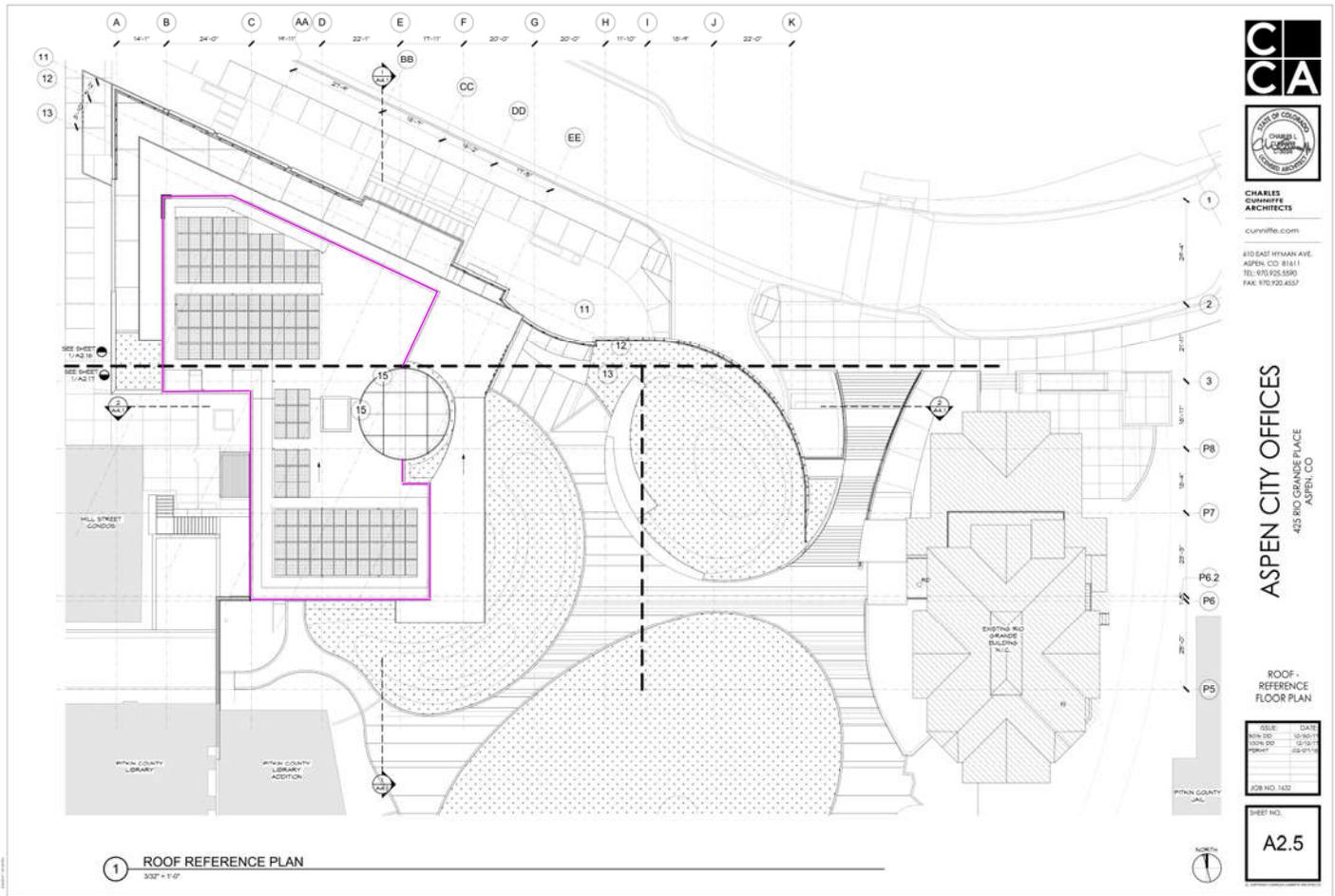


Legend	Pitch	Description	SF	LF	EA
		Typical Interior 3 5/8" Wall		207.53	15.00
✓		Corner Bead			15.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.5 Roof Plan

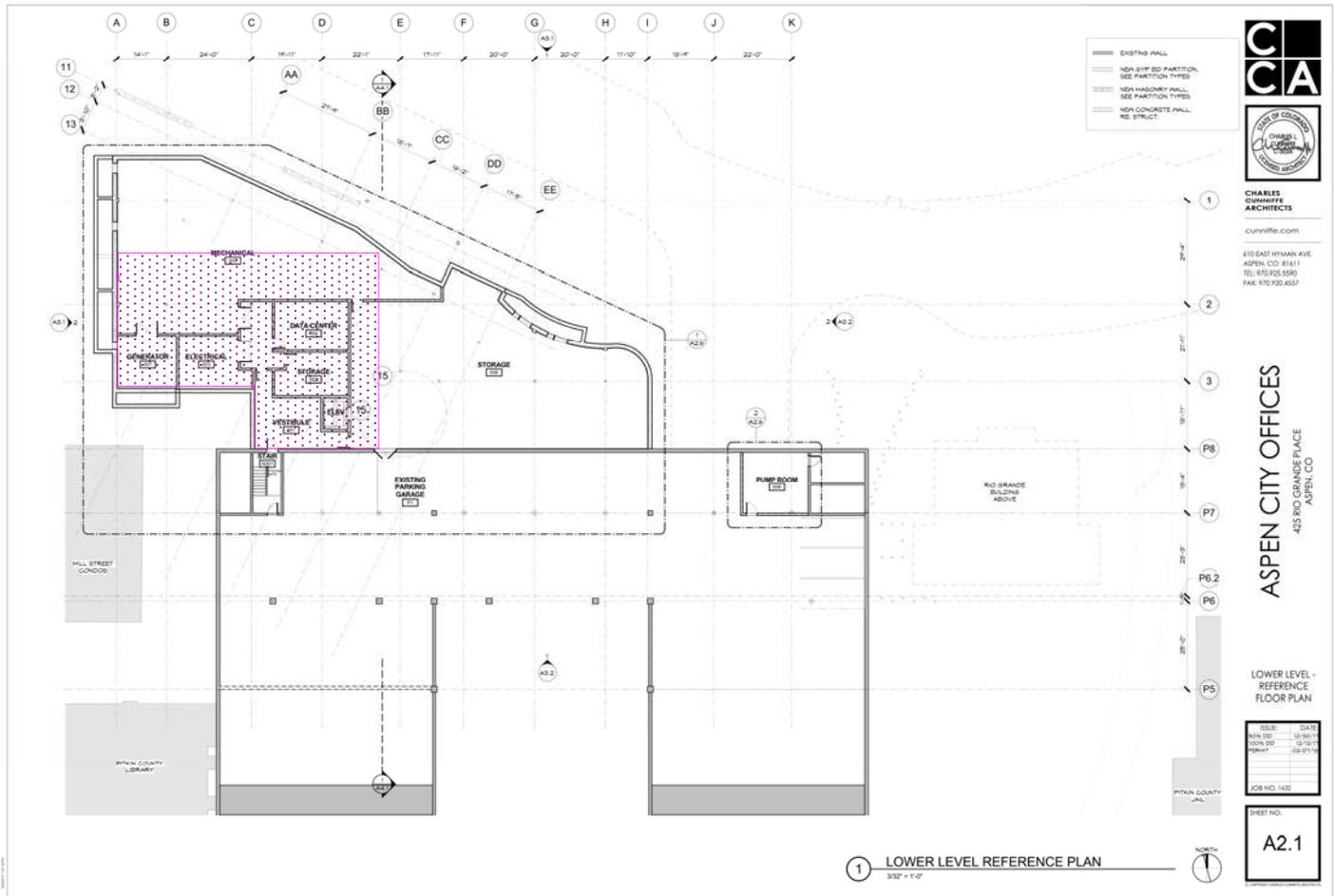


Legend	Pitch	Description	SF	LF	EA
		Parapet Wall		341.50	10.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.1 Level 0 RCP

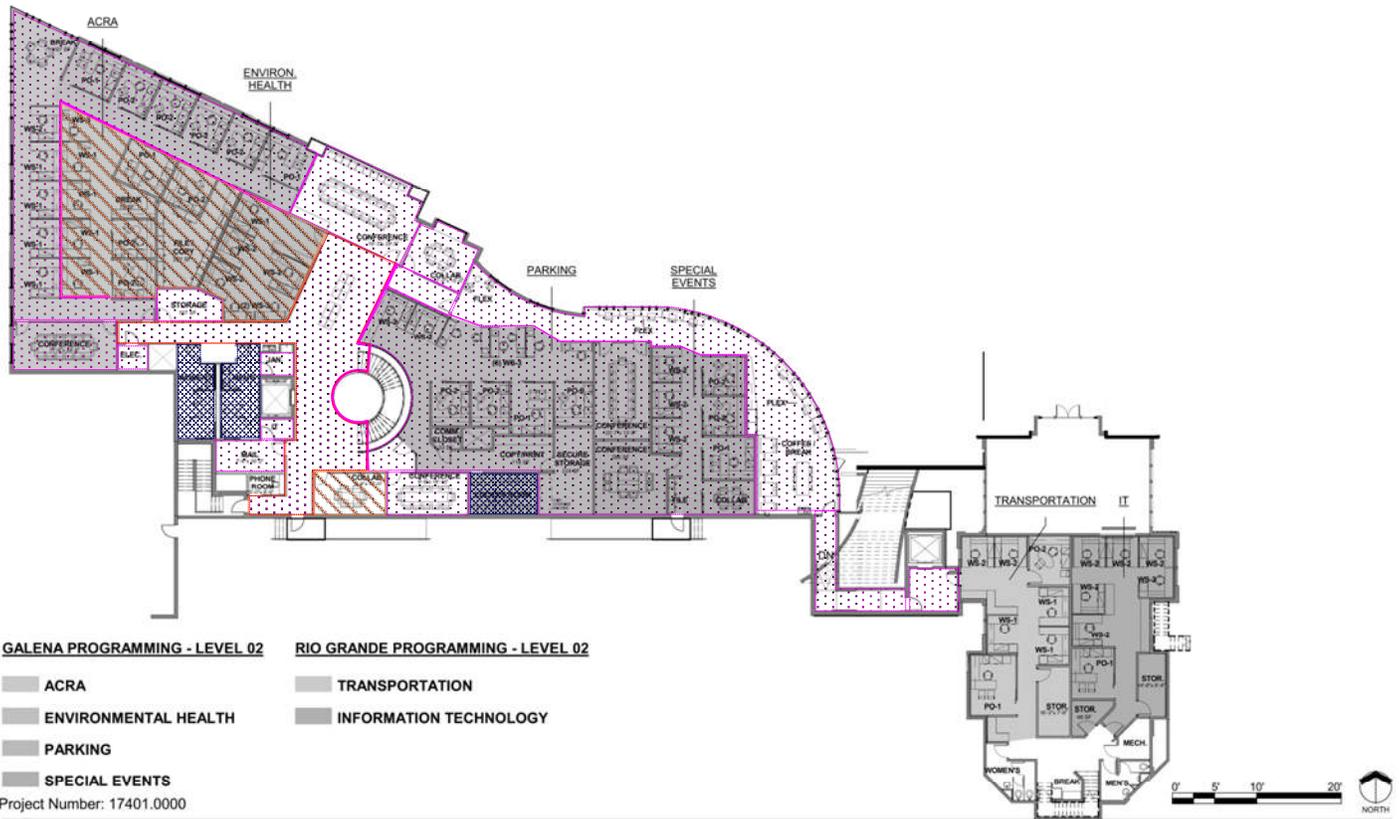


Legend	Pitch	Description	SF	LF	EA
		Drywall Grid System	3,387.22	260.14	8.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.3 Level 2 RCP



CHARLES CUNIFFE ARCHITECTS

FLOOR PLAN - LEVEL TWO - PROGRAMMING

01.22.2018



This Document was produced by or under the direct supervision of Dawn Chisholm Meierhardt.

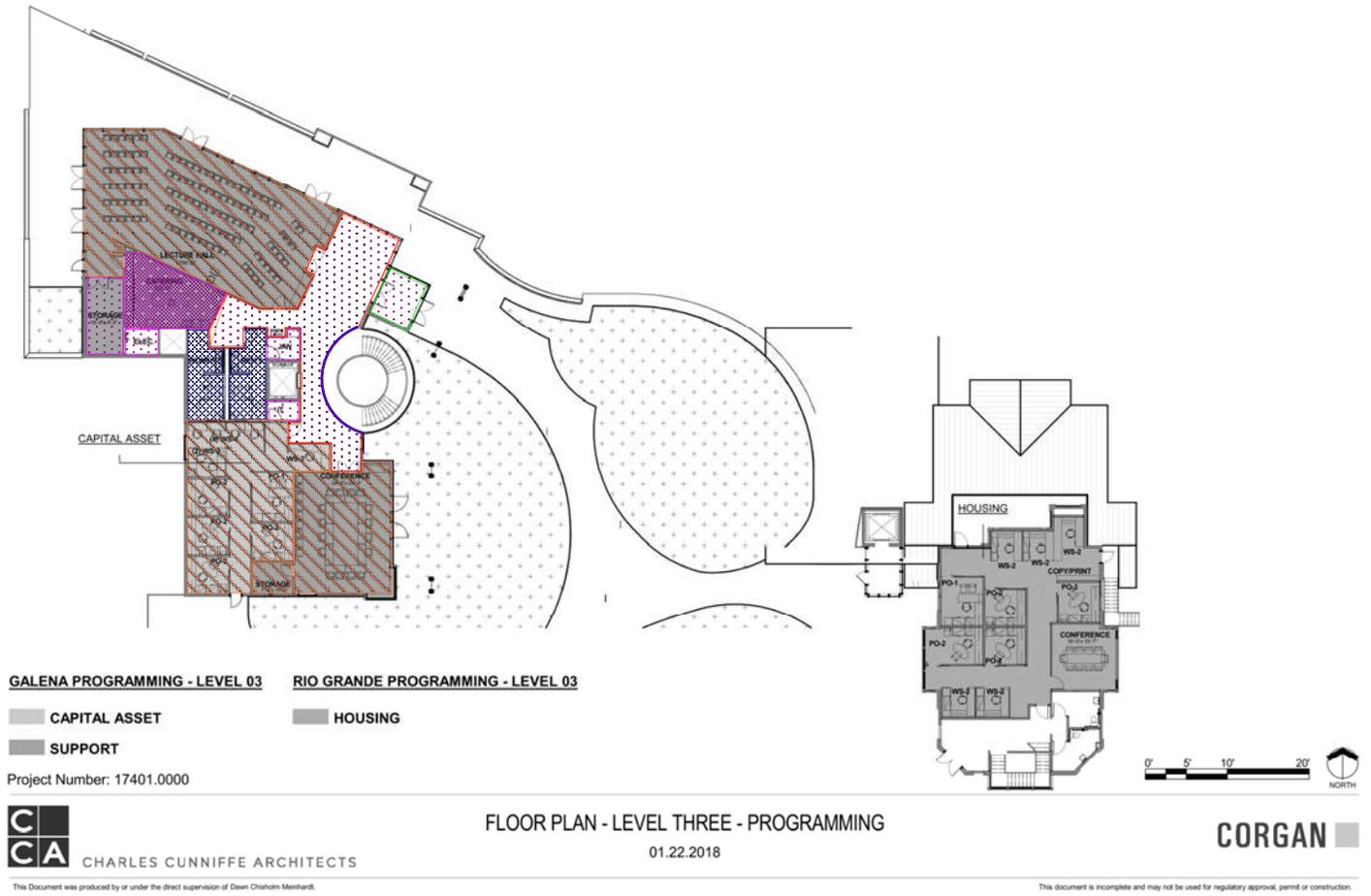
This document is incomplete and may not be used for regulatory approval, permit or construction.

Legend	Pitch	Description	SF	LF	EA
		9 Wood 1100 With 1" Tectum Above	1,197.18	284.85	241.00
		Single Drop Soffit		184.71	8.00
		Drywall Grid System	514.13	177.52	16.00
		2x2 Acoustical Ceiling System	8,347.09	1,568.08	422.00
		1" Tectum Panels Over 1 5/8" Stud Fran	2,096.64	254.41	13.00
		1 5/8" Stud Framed Ceiling Above 9 Wc	1,172.94	284.65	17.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A2.4 Level 3 RCP

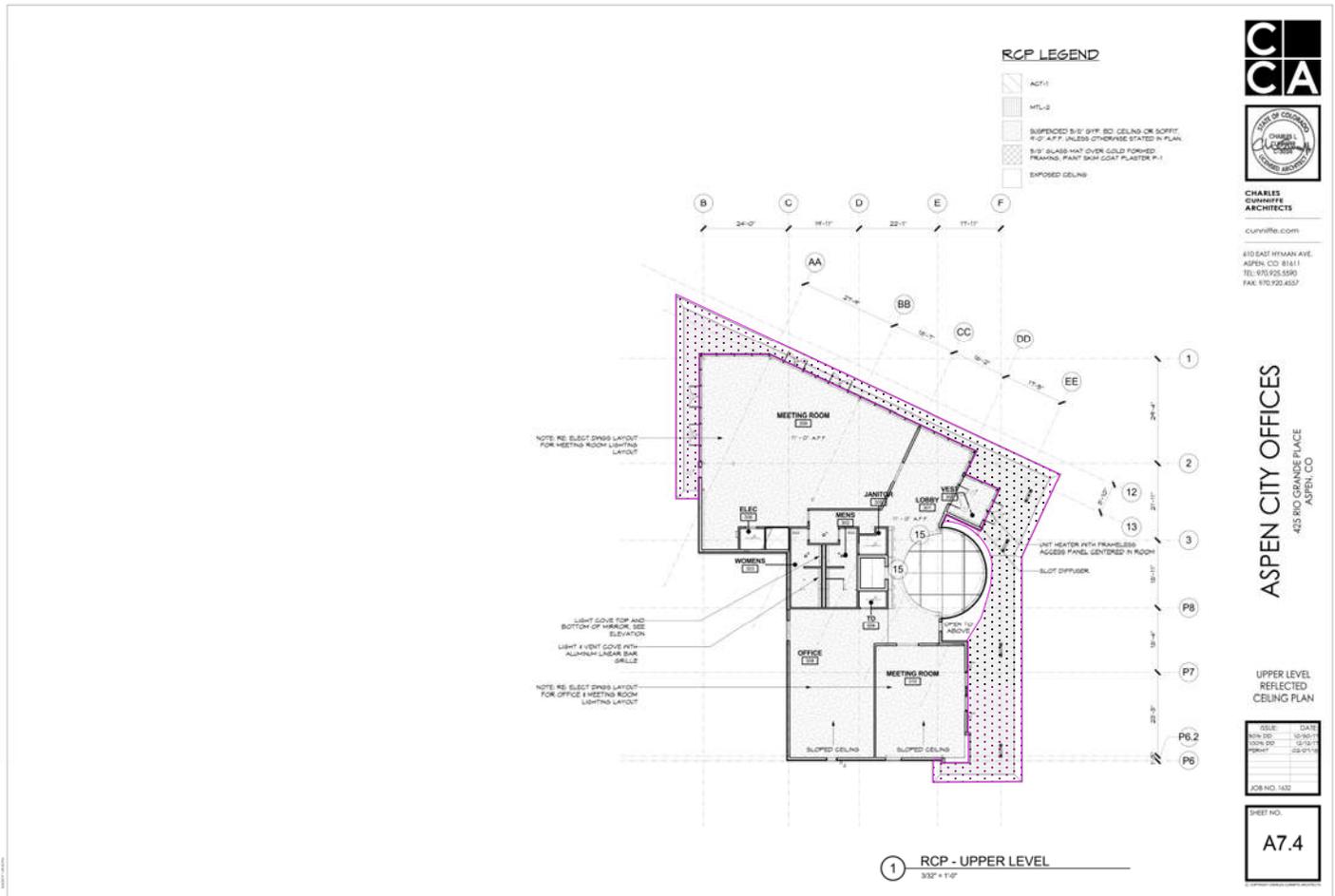


Legend	Pitch	Description	SF	LF	EA
		9 Wood 1100 With 1" Tectum Above	947.92	267.46	172.00
		Radius Soffit Drop		35.66	0.00
		Drywall Grid System	369.29	148.17	18.00
		2x2 Acoustical Ceiling System	327.83	146.71	23.00
		2x2 Washable - Acoustical Ceiling System	356.17	78.31	6.00
		1" Tectum Panels Over 1 5/8" Stud Framing	3,940.28	527.53	36.00
		9 Wood 2100 Linear	129.09	45.73	5.00
		1 5/8" Stud Framed Ceiling Above 9 Wood	962.67	241.79	25.00

Exhibit J - Drywall and Ceiling Assemblies

Aspen City Offices - SD Budget - Permit Set Budget

Section: Entire Job
Page: A7.4 Exterior Soffit Framing



Legend	Pitch	Description	SF	LF	EA
		Exterior Soffit - 5/8" FRT / T&G Install	2,257.47	563.26	21.00

Exhibit K - Interiors Finish



Aspen City Offices
Permit Drawings / 50% CD Set
Interiors Allowance

Page 1
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Aspen City Offices - 50% CD Permit Set - Interiors Allowances.pee

Project name ACO Build Back
425 Rio Grande Place
Aspen
CO 81611

Estimator JN

Labor rate table 1

Job size 36875 sf

Duration 17 mo

Bid date 1/26/2019

Report format Sorted by 'Group phase/Phase'
'Detail' summary
Allocate addons
Print sort level notes

Exhibit K - Interiors Finish



Aspen City Offices
Permit Drawings / 50% CD Set
Interiors Allowance

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Aspen City Offices - 50% CD Permit Set - Interiors Allowances.pee

Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
005000		METALS				
	005510	MISC. METALS				
		Angle Counter Support	64.00 lf	25.00 /lf	1,600	Bathroom & Locker Vanities
		MISC. METALS	36,875.00 sf	0.04 /sf	1,600	
<hr/>						
		METALS	36,875.00 sf	0.04 /sf	1,600	
006000		WOOD & PLASTICS*				
	006220	MILLWORK				
		Door Casings	* ex	0.00 /ex		0 Metal Frames
		Window Sills	250.00 lf	18.50 /lf	4,625	
		Baseboards	* ex	0.00 /ex		0 Resilient Base, Div. 09
		Wainscoting	* ex	0.00 /ex		0 at Public Areas
		MILLWORK	36,875.00 sf	0.13 /sf	4,625	
	006410	CABINETS				
		Base Cabinet	87.00 lf	300.00 /lf	26,100	Department Entry
		Wall Cabinet	* ex	0.00 /ex		0 Department Entry
		Offices and Conference Room	* ex	/ex		Assume Furniture
		Built-Ins				
		Break Room Cabinets & Counters	1.00 room	5,000.00 /room	5,000	
		3rd Level Lobby Entrance Desk	1.00 ea	15,000.00 /ea	15,000	
		CABINETS	36,875.00 sf	1.25 /sf	46,100	
	006415	COUNTER TOPS				
		Restroom & Locker Vanities	128.00 sf	85.00 /sf	10,880	8 Locations
		Solid Surface Counter Top	174.00 sf	75.00 /sf	13,050	Department Entry
		COUNTER TOPS	36,875.00 sf	0.65 /sf	23,930	
	006610	PLASTIC FABRICATIONS				
		FRP Wall Panels	180.00 sf	7.50 /sf	1,350	
		PLASTIC FABRICATIONS	36,875.00 sf	0.04 /sf	1,350	
<hr/>						
		WOOD & PLASTICS*	36,875.00 sf	2.06 /sf	76,005	
008000		DOORS & WINDOWS*				
	008110	STEEL DOORS/FRAMES				
		Unload & Distribute Frames	63.00 ea	15.00 /ea	945	
		Unload & Distribute Doors	67.00 ea	15.00 /ea	1,005	
		Unload & Distribute Hardware	63.00 ea	7.50 /ea	473	
		Interior Single Wood Door, Hollow Metal Frame, Hardware	59.00 ea	1,275.00 /ea	75,225	
		Interior Double Wood Door, Hollow Metal Frame, Hardware	4.00 ea	1,675.00 /ea	6,700	
		STEEL DOORS/FRAMES	36,875.00 sf	2.29 /sf	84,348	
	008810	GLASS & GLAZING				
		Unframed Mirrors	256.00 sf	20.00 /sf	5,120	8 - 8' x 4'
		GLASS & GLAZING	36,875.00 sf	0.14 /sf	5,120	
<hr/>						
		DOORS & WINDOWS*	36,875.00 sf	2.43 /sf	89,468	
009000		FINISHES*				
	009310	CERAMIC TILE				
		Ceramic Wall Tile	5,107.00 sf	20.00 /sf	102,140	
		- Tile Backer and Waterproofing	5,107.00 sf	8.50 /sf	43,410	
		Ceramic Floor Tile	1,511.00 sf	16.00 /sf	24,176	
		- Antifracture Membrane	1,511.00 sf	4.00 /sf	6,044	
		- Tile Base	638.00 lf	8.00 /lf	5,104	
		Tile Sealer	6,618.00 sf	2.00 /sf	13,236	
		Floor Prep	6,618.00 sf	0.25 /sf	1,655	
		Finished Floor Protec'n - Ceramic	6,618.00 sf	0.45 /sf	2,978	
		CERAMIC TILE	36,875.00 sf	5.39 /sf	198,742	
	009510	ACOUSTICAL CEILINGS				
		Acoustical Ceilings, Tectum, and 9Wood	36,875.00 sf	13.33 /sf	491,473	SDI
		Acoustic Ceiling Tiles System	* incl	0.00 /incl	0	
		Tectum Panels	* incl	0.00 /incl	0	

Exhibit K - Interiors Finish



Aspen City Offices
Permit Drawings / 50% CD Set
Interiors Allowance

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Aspen City Offices - 50% CD Permit Set - Interiors Allowances.pee

Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
009510		ACOUSTICAL CEILINGS				
		9 Wood Ceilings	* incl	/incl		
		ACOUSTICAL CEILINGS	36,875.00 sf	13.33 /sf	491,473	
009650		RESILIENT FLOORING				
		LVT Flooring	1,778.00 sf	7.00 /sf	12,446	
		4" Rubber Base	2,700.00 lf	2.25 /lf	6,075	
		RESILIENT FLOORING	36,875.00 sf	0.50 /sf	18,521	
009680		CARPET				
		Walk Off Carpet	25.00 sy	64.00 /sy	1,600	
		Carpet Tiles	2,789.00 sy	44.00 /sy	122,716	
		Floor Prep	25,101.00 sf	0.25 /sf	6,275	
		Finished Floor Protec'n - Carpet	25,101.00 sf	0.18 /sf	4,518	
		CARPET	36,875.00 sf	3.66 /sf	135,109	
009840		ACOUSTICAL WALL TREATMENT				
		Acoustic Wall Panels 1/4"	* ex	0.00 /ex	0	
009910		PAINTING				
		Paint	40,000.00 sf	7.00 /sf	280,000	
		Touch-up	40,000.00 sf	0.50 /sf	20,000	
		PAINTING	36,875.00 sf	8.14 /sf	300,000	
FINISHES*			36,875.00 sf	31.02 /sf	1,143,846	
010000		SPECIALTIES*				
010115		MARKERBOARDS				
		Markerboards - 4' x 8'	* ex	0.00 /ex	0 By Owner	
		Markerboards - 4' x 8'	* ex	0.00 /ex	0 By Owner	
		Markerboards - 4' x 8'	* ex	0.00 /ex	0 By Owner	
010160		METAL TOILET PARTITIONS				
		Metal Toilet Partitions	8.00 room	0.00 /room	0	
		Metal Partitions	24.00 ea	850.00 /ea	20,400	
		Urinal Screens	4.00 ea	650.00 /ea	2,600	
		METAL TOILET PARTITIONS	36,875.00 sf	0.62 /sf	23,000	
010440		INTERIOR SIGNAGE				
		Interior Signage Allowance	36,875.00 sf	0.50 /sf	18,438	
		INTERIOR SIGNAGE	36,875.00 sf	0.50 /sf	18,438	
010510		LOCKERS				
		Metal Lockers and Benches	1.00 ls	10,000.00 /ls	10,000	
		LOCKERS	36,875.00 sf	0.27 /sf	10,000	
010810		TOILET ACCESSORIES				
		Toilet Accessories	8.00 room	5,000.00 /room	40,000	
		Shower Accessories	2.00 room	2,500.00 /room	5,000	
		TOILET ACCESSORIES	36,875.00 sf	1.22 /sf	45,000	
SPECIALTIES*			36,875.00 sf	2.62 /sf	96,438	
011000		EQUIPMENT*				
011450		RESIDENTIAL APPLIANCES				
		Break Room Appliances	1.00 room	6,000.00 /room	6,000	
		RESIDENTIAL APPLIANCES	36,875.00 sf	0.16 /sf	6,000	
EQUIPMENT*			36,875.00 sf	0.16 /sf	6,000	
012000		FURNISHINGS*				
012350		SPECIALTY CASEWORK				
		High Density Storage Shelving	* ex	0.00 /ex	0	
012490		WINDOW TREATMENTS				
		Manual Single Shade Window Coverings	1,000.00 sf	22.00 /sf	22,000	

Exhibit K - Interiors Finish



Aspen City Offices
Permit Drawings / 50% CD Set
Interiors Allowance

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Aspen City Offices - 50% CD Permit Set - Interiors Allowances.pee

Group	Phase	Description	Takeoff Quantity	Total Cost/Unit	Total Amount	Previous Budget/Notes
		WINDOW TREATMENTS	36,875.00 sf	0.60 /sf	22,000	
		FURNISHINGS*	36,875.00 sf	0.60 /sf	22,000	
015000		MECHANICAL*				
	015050	MECHANICAL				
		Complete Mechanical / Plumbing for Interiors	36,875.00 sf	18.00 /sf	663,750	Add'l VAV's, Ductwork, Hydronic Piping, etc.
		MECHANICAL	36,875.00 sf	18.00 /sf	663,750	
		MECHANICAL*	36,875.00 sf	18.00 /sf	663,750	
016000		ELECTRICAL*				
	016010	ELECTRICAL				
		LED Fixtures and Controls	36,875.00 sf	13.70 /sf	505,000	B&B
		ELECTRICAL	36,875.00 sf	13.70 /sf	505,000	
		ELECTRICAL*	36,875.00 sf	13.70 /sf	505,000	

Exhibit K - Interiors Finish



Aspen City Offices
 Permit Drawings / 50% CD Set
 Interiors Allowance

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Estimate Totals

Description	Amount	Totals	Rate
	2,604,105	2,604,105	
Subcontractor Bonds (included)			
Material Sales Tax - Exempt			
Labor Burden	2,377		21.850 %
	2,377	2,606,482	
General Liability - w/GC's			
Builders Risk - w/GC's			
Warranty Reserve - w/GC's			
P & P Bond - w/GC's			
Cloud Technology Services		2,606,482	
Preconstruction			
Estimating Contingency			
Design Contingency			
Contractor Contingency			
Contractor Fee			
Total		2,606,482	



RESOLUTION # 59

(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AUTHORIZING THE CITY MANAGER TO EXERCISE ADMINISTRATIVE OVERSIGHT OF CHANGE ORDERS THAT ARE WITHIN THE APPROVED NEW CITY OFFICES 425/455 RIO GRANDE BUDGET AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CHANGE ORDERS ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a Project Budget Update for the New City Offices 425/455 Rio Grande in the Sum of \$34,240,260, attached hereto as Exhibit B; and,

WHEREAS, a contract addendum for the New City Offices was presented to Council pursuant to Resolution #58 (Series of 2019); and,

WHEREAS, City Council has determined that it is in the best interest of the City of Aspen to authorize the City Manager to exercise administrative oversight of change orders that are within the approved new city offices 425/455 Rio Grande budget and to authorize the City Manager to execute said change orders on behalf of the city of Aspen, Colorado.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen does hereby authorize the City Manager to exercise administrative oversight of any change orders that are within the current approved net project budget of \$34,240,260; and does hereby authorize the City Manager to execute said change orders on behalf of the City of Aspen. Council will be updated by staff and the City Manager on a regular basis.

INTRODUCED AND ADOPTED by the City Council of the City of Aspen on the 13th, day of May 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, May 13, 2019.

Linda Manning, City Clerk

Exhibit B: New City Offices 425/455 Rio Grande - Budget Update

Item Description	Cost
New City Offices 425/455 Rio Grande - Infrastructure	\$2,328,296
New City Offices 425/455 Rio Grande - Building Contract	\$24,793,764
Indirect Costs - Design, CMa, Testing, Permits	\$4,218,200
Owner Contingency	\$2,900,000
Total City Offices - 425/455 Rio Grande	\$34,240,260

RESOLUTION 15
(Series of 2016)

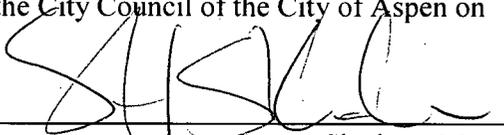
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,
APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND SHAW
CONSTRUCTION., AUTHORIZING THE CITY MAYOR TO EXECUTE SAID CONTRACT
ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract, AIA C132 – 2009
Contract - Standard Form of Agreement Between Owner and General Contractor - between the
City of Aspen and Shaw Construction a true and accurate copy of which is attached hereto as
“Exhibit I”. In addition, the contract will be supplemented by AIA A201-2007 General
Conditions of the Contract for Construction, a true and accurate copy of which is attached hereto
as “Exhibit II”.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF ASPEN, COLORADO,

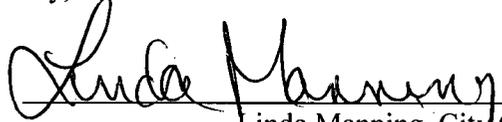
That the City Council of the City of Aspen hereby approves the Contract between the
City of Aspen and Shaw Construction a copy of which is annexed hereto and incorporated
herein, and does hereby authorize the City Mayor to execute said agreement on behalf of the City
of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on
the 22nd day of February, 2016.



Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a
true and accurate copy of that resolution adopted by the City Council of the City of Aspen,
Colorado, at a meeting held on the 22nd day of February, 2016.



Linda Manning, City Clerk



Determination of the Cost of the Work

for the following Project:

City of Aspen Civic Space Relocation Project
540 East Main St (Police Station) and
Rio Grande Place (Civic office)

THE OWNER:

The City of Aspen
130 South Galena St
Aspen, Colorado 81611

THE CONTRACTOR:

Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506

THE CONSTRUCTION MANAGER:

NV5, Inc.
2650 18th St, Suite 202
Denver, Colorado, 80211

THE ARCHITECT:

Charles Cunniffe Architects
610 E. Hyman Avenue
Aspen, Colorado, 81611

ARTICLE A.1 CONTROL ESTIMATE

§ A.1.1 Where the Contract Sum is based on the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 4.1 of the Agreement, the Contractor shall prepare and submit to the Construction Manager, for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect Changes in the Work.

§ A.1.2 The Control Estimate shall include

- .1 the documents enumerated in Article 1 of the Agreement, including all Addenda thereto and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under A.1.4, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232[™]-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132[™]-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232[™]-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

- .4 schedules indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment that must be ordered well in advance of construction, and the Owner's occupancy requirements showing portions of the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section A.1.4.

§ A.1.3 The Contractor shall meet with the Owner and Construction Manager to review the Control Estimate. In the event that the Owner or Construction Manager discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ A.1.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ A.1.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Construction Manager with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, through the Construction Manager, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

ARTICLE A.2 COSTS TO BE REIMBURSED

§ A.2.1 Cost of the Work

§ A.2.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior audit and consent of the Owner. The Owner and Contractor agree that the labor and equipment rates set forth in Exhibit E and Exhibit F shall be subject to a pre-audit by the Owner, after which the rates shall not be subject to further audit or adjustment. The Cost of the Work shall include only the items set forth in this Article A.2.

§ A.2.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Agreement.

§ A.2.2 Labor Costs

§ A.2.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Overtime for non-exempt employees may be charged at 1.5 times the base Hourly Rates.

§ A.2.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(Paragraph deleted)

Person Included	Status (Full-time/Part-time)	Rate (\$0.00)	Rate (Unit of Time)
<Refer Exhibit E>	<Refer Exhibit E>	<Refer Exhibit E>	<Refer Exhibit E>

§ A.2.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.2.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.2.2.

§ A.2.2.5 Contractor's project personnel stationed at the Contractor's principal office or offices other than the site office, will not be charged to this Project without the Owner's prior written approval. With the Owner's prior approval, such personnel will be paid based on actual hours devoted to the Project at the rates to be listed in the approved Burdened Hourly Rates schedule in Exhibit E. With the Owner's prior approval, reasonable travel and temporary living expenses are allowed for such employees. Salaried, exempt employees of Contractor will not be paid an overtime premium, and will not charge the Project for more than 40 hours in any week. Wages or salaries of officers of the company, Project Executives, Construction Executives, Senior Project Executives or above will not be reimbursed under any circumstances. The Owner accepts that some staff such as Admin, Accounting and Project Manager may be based off-site and this will be confirmed in the final GMP addendum.

§ A.2.3 Subcontract Costs

Payments made by the Contractor to any Subcontractors in accordance with the requirements of the subcontracts on the Project will be considered a Cost of the Work and the Contractor will be entitled to no more than the fee in Section 4.4.2.2 on Subcontract costs.

§ A.2.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.2.4.2 Costs of materials described in the preceding Section A.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.2.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.2.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ A.2.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.2.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.2.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ A.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.2.6 Miscellaneous Costs

§ A.2.6.1 Premiums for that portion of Contractor's insurance and bonds required by the Contract Documents that can be directly attributed to this Contract shall be reimbursed at the rates established in Exhibit E.

§ A.2.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable and which are not exempt under the City's Tax Exemption.

§ A.2.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ A.2.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by A201-2007, General Conditions of the Contract for Construction, or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.2.7.3.

§ A.2.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents, and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ A.2.6.6 Costs for electronic equipment, cell phones computers and software, office furniture and office equipment directly related to the Work with the Owner's prior approval. The total rental costs of any rental item, excluding the cost of insurance, repairs and maintenance, whether a Contractor owned item, or otherwise, may not exceed the purchase price of any comparable item. Items purchased for the Project as a direct cost charged to the Project belong to the Owner.

§ A.2.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ A.2.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, and other than those related to claims filed by subcontractors or material suppliers for non-payment on the project, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.2.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the performance of the Work on this project at the rates defined and agreed Exhibit E. Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like will not be reimbursed under and circumstances.

§ A.2.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.2.6.11 General Conditions will be paid monthly, on the basis of the Cost of the Work as defined in A132-2009 Exhibit A, Determination of the Cost of the Work, to a maximum of the General Conditions GMP.

§ A.2.7 Other Costs and Emergencies

§ A.2.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.2.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.2.7.3 Costs of repairing or correcting damaged Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged Work was not caused by negligence, failure to conform to the Contract documents, or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ A.2.8 Related Party Transactions

§ A.2.8.1 For purposes of Section A.2.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ A.2.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner and the Construction Manager of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.5. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article A.5.

§ A.2.9 Contingency

§ A.2.9.1 The Contractor's GMP may include up to 2% of the GMP as a Contractor's Contingency for the Contractor's exclusive use to cover costs defined in Article 7 which are properly considered reimbursable as a Cost of the Work but do not form the basis for a Change Order or an increase in the GMP in accordance with the Contract Documents, or as a result of changes in the scope of the Work. No Fee is added to the Contractor's Contingency at the time the GMP is prepared.

§ A.2.9.2 The Contractor shall report and reconcile the Contractor's Contingency to the Owner on a monthly basis. If the Contractor wishes to use the Contractor's Contingency during the Project, the Contractor Contingency will be allocated to specific line items in the Estimate through the use of a Change Order signed by the Owner and Contractor, including a description of the items covered by the Contractor's Contingency. The Contractor's Fee on the contingency amount will be added to the Change Order at the time the contingency is allocated to individual line items. The allocation of the contingency will not increase the GMP, however the Contractor's Fee on the contingency amount will increase the GMP.

§ A.2.9.3 The Owner shall not unreasonably withhold approval of a Change Order to utilize the Contractor's Contingency provided (a) the contingency amount requested does not exceed the GMP and (b) the Contractor utilizes the Contractor's Contingency for items required for the Project that are otherwise recoverable as Costs of the Work under the Contract Documents but do not form the basis for a Change Order, for example:

- .1 Scope of the Work that is unclear, incomplete or conflicting on the Contract Documents but which is Work consistent with the Contract Documents and reasonably inferable as being necessary to produce the intended results; or
- .2 Additional resources necessary to recover lost time for non-excused delays. If overtime is required to maintain the schedule, the Contractor shall obtain the Owner's prior written approval before moving forward with such overtime; or
- .3 Additional costs to expedite the schedule for non-excusable delays caused by market, labor, material or transportation conditions, labor disputes, normal adverse weather or other causes which are costs of the Work but do not justify an increase in the GMP; or
- .4 Additional costs necessary to complete the Work included in the Contract Documents due to a subcontractor default, replacement of a subcontractor, or other costs to supplement completion of the Work, or
- .5 Other unanticipated costs which do not form the basis for an increase in the GMP. Mis-scope and scope buy-out gaps are an acceptable use of this contingency.

§ A.2.9.4 The Contractor's Contingency is not available for use by the Contractor for mistakes that result from Self-Performed Work, mistakes of subcontractors or vendors, subcontractor's warranty work, or manufacturer's warranty work.

§ A.2.9.5 The Contractor's Contingency is not available for use by the Owner for allowance overruns, changes in the Scope of Work, differing or changed site conditions, or design errors.

§ A.2.9.6 At Final Completion of the Project, any Contractor's Contingency remaining in the Final GMP will be returned 100% to the Owner.

ARTICLE A.3 COSTS NOT TO BE REIMBURSED

§ A.3.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, officers of the company, Project Executives, Construction Executives and the like, except as specifically provided in Section A.2.2.2;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article A.2;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section A.2.7.3 of this Agreement, costs to correct defective, non-conforming work; or work damaged due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article A.2; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Entertainment, business development meals, meals delivered to the job site, or similar expenses.
- .9 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the contractor, or paid to any Subcontractor or vendor without the Owners prior approval.
- .10 Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like

ARTICLE A.4 DISCOUNTS, REBATES AND REFUNDS

§ A.4.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.4.2 Amounts that accrue to the Owner in accordance with Section A.4.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE A.5 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own forces, defined as the Contractor's own personnel or employees, shall be performed under subcontracts or purchase agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Construction Manager and Architect. The Owner shall then determine, with the advice of the Contractor, Construction Manager, and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.5.2 When a the Contractor has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Contractor, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted after the GMP has been established, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.3 Subcontracts, purchase orders or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without a guaranteed maximum price or lump sum price. If a subcontract or purchase order is awarded on the basis of cost-plus a fee with a guaranteed maximum price, the Contractor shall provide in the subcontract or purchase order for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.6, below.

ARTICLE A.6 ACCOUNTING RECORDS

§ A.6.1 The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Construction Manager. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, on at least a monthly basis, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ A.6.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors through the Construction Manager, a final accounting of the Cost of the Work.

§ A.6.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Construction Manager by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section A.6.2 have been met, the Construction Manager and Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Construction Manager and Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section A.6.3 supersede those stated in Section 9.4.1 of AIA Document A201-2007. The Construction Manager and Architect are not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.6.4 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Initial Decision Maker. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Construction Manager and Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

§ A.6.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.2, Costs to be Reimbursed, and not excluded by Article A.3, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor. The Owner shall not be required to reimburse the Contractor to correct defective or non-conforming Work of Subcontractors or Sub-subcontractors, or damage to the Work which is covered under any policies of insurance.

Additions and Deletions Report for AIA® Document A132™ – 2009 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:12:39 on 02/10/2016.

PAGE 1

~~(Name, location and brief description)~~
City of Aspen Civic Space Relocation Project
540 East Main St (Police Station) and
Rio Grande Place (Civic office)

THE OWNER:

~~(Name, legal status, address and other information)~~

The City of Aspen
130 South Galena St
Aspen, Colorado 81611

...

~~(Name, legal status, address and other information)~~

Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506

...

~~(Name, legal status, address and other information)~~

NV5, Inc.
2650 18th St, Suite 202
Denver, Colorado, 80211

...

~~(Name, legal status, address and other information)~~

Charles Cunniffe Architects
610 E. Hyman Avenue
Aspen, Colorado, 81611

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§ A.2.1.1 ~~The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior audit and consent of the Owner. The Owner and Contractor agree that the labor and equipment rates set forth in Exhibit E and Exhibit F shall be subject to a pre-audit by the Owner, after which the rates shall not be subject to further audit or adjustment.~~ The Cost of the Work shall include only the items set forth in this Article A.2.

...

§ A.2.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Overtime for non-exempt employees may be charged at 1.5 times the base Hourly Rates.

...

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

...

<Refer Exhibit E>

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§ A.2.2.5 ~~Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval. Contractor's project personnel stationed at the Contractor's principal office or offices other than the site office, will not be charged to this Project without the Owner's prior written approval. With the Owner's prior approval, such personnel will be paid based on actual hours devoted to the Project at the rates to be listed in the approved Burdened Hourly Rates schedule in Exhibit E. With the Owner's prior approval, reasonable travel and temporary living expenses are allowed for such employees. Salaried, exempt employees of Contractor will not be paid an overtime premium, and will not charge the Project for more than 40 hours in any week. Wages or salaries of officers of the company, Project Executives, Construction Executives, Senior Project Executives or above will not be reimbursed under any circumstances. The Owner accepts that some staff such as Admin, Accounting and Project Manager may be based off-site and this will be confirmed in the final GMP addendum.~~

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Payments made by the Contractor to any Subcontractors in accordance with the requirements of their subcontracts the subcontracts on the Project will be considered a Cost of the Work and the Contractor will be entitled to no more than the fee in Section 4.4.2.2 on Subcontract costs.

...

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§ A.2.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is ~~liable~~ and which are not exempt under the City's Tax Exemption.

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§ A.2.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by ~~A232™ 2009, A201-2007, General Conditions of the Contract for Construction, current as of the date of this Agreement and Exhibit~~ or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.2.7.3.

§ A.2.6.6 Costs for electronic equipment and software, equipment, cell phones computers and software, office furniture and office equipment directly related to the Work with the Owner's prior approval. The total rental costs of any rental item, excluding the cost of insurance, repairs and maintenance, whether a Contractor owned item, or otherwise, may not exceed the purchase price of any comparable item. Items purchased for the Project as a direct cost charged to the Project belong to the Owner.

...

§ A.2.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, and other than those related to claims filed by subcontractors or material suppliers for non-payment on the project, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.2.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work-performance of the Work on this project at the rates defined and agreed Exhibit E. Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like will not be reimbursed under and circumstances.

...

§ A.2.6.11 General Conditions will be paid monthly, on the basis of the Cost of the Work as defined in A132-2009 Exhibit A, Determination of the Cost of the Work, to a maximum of the General Conditions GMP.

...

§ A.2.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence negligence, failure to conform to the Contract documents, or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

PAGE 5

§ A.2.9 Contingency

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.1 Scope of the Work that is unclear, incomplete or conflicting on the Contract Documents but which is Work consistent with the Contract Documents and reasonably inferable as being necessary to produce the intended results; or

.2 Additional resources necessary to recover lost time for non-excused delays. If overtime is required to maintain the schedule, the Contractor shall obtain the Owner's prior written approval before moving forward with such overtime; or

.3 Additional costs to expedite the schedule for non-excusable delays caused by market, labor, material or transportation conditions, labor disputes, normal adverse weather or other causes which are costs of the Work but do not justify an increase in the GMP; or

.4 Additional costs necessary to complete the Work included in the Contract Documents due to a subcontractor default, replacement of a subcontractor, or other costs to supplement completion of the Work, or

.5 Other unanticipated costs which do not form the basis for an increase in the GMP. Mis-scope and scope buy-out gaps are an acceptable use of this contingency.

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§ A.2.9.6 At Final Completion of the Project, any Contractor's Contingency remaining in the Final GMP will be returned 100% to the Owner.

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.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, officers of the company, Project Executives, Construction Executives and the like, except as specifically provided in Section A2.2.2;

.5 Except as provided in Section A.2.7.3 of this Agreement, costs to correct defective, non-conforming work, or work damaged due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

.8 Entertainment, business development meals, meals delivered to the job site, or similar expenses.

.9 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the contractor or paid to any Subcontractor or vendor without the Owners prior approval.

.10 Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like

...

§ A.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own forces, defined as the Contractor's own personnel or employees, shall be performed under subcontracts or by other

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§ ~~A.5.2~~ When a the Contractor has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Contractor, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be ~~accepted~~, accepted after the GMP has been established, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ ~~A.5.3~~ ~~Subcontracts~~ Subcontracts, purchase orders or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the ~~prior consent of the Owner~~. If the subcontract is awarded on a cost plus a fee basis, a guaranteed maximum price or lump sum price. If a subcontract or purchase order is awarded on the basis of cost-plus a fee with a guaranteed maximum price, the Contractor shall provide in the subcontract or purchase order for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.6, below.

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§ ~~A.6.1~~ The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. ~~The accounting and control systems shall be satisfactory to the Owner and the Construction Manager. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, on at least a monthly basis, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.~~

...
§ ~~A.6.3~~ The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Construction Manager by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section A.6.2 have been met, the Construction Manager and Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Construction Manager and Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document ~~A232-2009, A201-2007~~. The time periods stated in this Section A.6.3 supersede those stated in Section 9.4.1 of AIA Document ~~A232-2009, A201-2007~~. The Construction Manager and Architect are not responsible for verifying the accuracy of the Contractor's final accounting.

...
§ ~~A.6.5~~ If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.2, Costs to be Reimbursed, and not excluded by Article A.3, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor. The Owner shall not be required to reimburse the Contractor to correct

defective or non-confirming Work of Subcontractors or Sub-subcontractors, or damage to the Work which is covered under any policies of insurance.





City of Aspen Civic Space Relocation Project

Schedule E – Contractor Burdened Hourly Labor Rates & Contract Rates for Fees,
Overhead, Insurance Shaw Construction Rates

DESCRIPTION	RATE
^ ▶ ▼ Project Superintendent	\$78.65/hr
▲* Assistant Superintendent	\$71.95/hr
^ ▶ ▼ Project Engineer	\$40.78/hr
▲* Project Manager	\$54.76/hr
▼▲* Construction Manager	\$72.01/hr
▼▶* Director of Pre-Construction	\$70.12/hr
▼▶* Senior Estimator	\$49.52/hr
* Safety Supervisor	\$78.65/hr
▼* Project Coordinator	\$24.24/hr
▼▲* CPM Scheduler	\$67.00/hr
+ * General Laborer	\$23.18/hr
+ * Labor Foreman (exclusive of subsistence)	\$22.00/hr
+ * Carpenter Foreman (exclusive of subsistence)	\$26.40/hr
+ * Carpenters (exclusive of subsistence)	\$22.50/hr
Project Vehicles	\$7.15/hr
Copier & Fax (excludes supplies)	\$305/month/each
Cell Phones / Tablets	\$0.56/hr
IT Services (Computer, network, software)(excluding maintenance & supplies)	\$3.00/hr
* Computer IT Support	\$33.17/hr
Cloud Technology Services	.10% of GMP
Insurance (Liability, Umbrella, Auto, Professional & Pollution)	0.925% of GMP
Builders Risk Insurance	\$1,500/month
Subsistence	Actual Cost as Required
P&P Bond	.615% of GMP
Warranty Reserve	0.40% of GMP for 1 year 0.60% of GMP for 2 year
Labor Burden, FICA, FUTA, SUTA	20% of labor
OH/Fee for Construction	5.45%

NOTES

Labor Burden apply to all positions with *

Hourly Employees overtime rate = 1.5 x base rate, applies to all positions shown with +

All rates are agreed upon in advance by Construction Manager and Owner, and while hours and usage are subject to audit, rates and percentages on this Exhibit are not subject to audit.

Subsistence applies to all positions shown with ^

Labor rates are subject to 3% increase on January 1, of each year.

Project vehicles applies to all positions shown with ▶

Cell Phones / Tablets phones apply to all positions shown with ▲

IT Services (Computer, network, software) apply to all positions shown with ▼

The labor burden, subsistence, project vehicles, cell phones/tablets, and IT Services (computer, network, software) are added on top of the staff rates as noted in exhibit. So an example of the project superintendent would be \$78.65/hour + 20% labor burden which would make up the burden rate of \$94.38/hour. There would then be the hourly charge for the project vehicle, cell phone/tablets, and IT (computer, network, software) services per the exhibit schedule for the project superintendent in this example.



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General Conditions of the Contract for Construction

for the following PROJECT:

City of Aspen Building Replacement Project
540 E. Main Street, Rio Grande Place, and Armory Building
Aspen, Colorado 81611

THE OWNER:

City of Aspen
130 South Galena Street
Aspen, Colorado 81611

THE ARCHITECT:

Charles Cunniffe Architects, P.C.
610 E. Hyman Avenue
Aspen, Colorado 81611

THE CONTRACTOR:

Shaw Construction LLC
760 Horizon Drive, Unit 201
Grand Junction, CO 81506
Phone: (970) 242-9236
Contact: Steve H. Meyer

THE CONSTRUCTION MANAGER:

NV5 Inc.
2650 18th Street, Suite
Denver, Colorado 80211
Phone: (720) 201-6373
Contact: John Bills

THE COMMISSIONING AGENT:

Ambient Energy
130 W. 5th Avenue
Denver, CO 80204
Phone: (303) 278-1532
Contact: Tracey A. Whaley

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between the Contractor and the Construction Manager, or (5) between any persons or entities other than the Owner and the Contractor. The Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or

higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

.1 Addendum and modifications to the Drawings and Specifications take precedence over the original Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Architect shall decide which condition will provide the best installation and his/her decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractors, both principal and subcontractors, are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor shall properly coordinate his/her work with that of all other contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install his/her work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Architect for disposition prior to the installation of any affected work.

.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Architect as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Architect for interpretation.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, except to the extent that they have assigned to the Owner all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service.

The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Notwithstanding the previous sentence, or any information in the Contract Documents to the contrary, the original Contract, and the approval of increases in the Contract Sum or Contract Time, and the execution of Amendments and Change Orders to the Agreement shall not be binding on the City without an authorized signature in accordance with the City of Aspen Procurement Code. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative, except as otherwise indicated above.

(Paragraph deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The Owner shall furnish the services of a Commissioning Agent who will assist the Owner, as well as conduct inspections and prepare commissioning reports during the construction phase. The Contractor shall be required to correct any deficiencies identified by the Commissioning Agent.

§ 2.2.10 The Owner shall furnish the services of a Material Testing Firm, who will provide inspections and material testing reports during the construction phase.

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§ 2.3 CONSTRUCTION MANAGER

§ 2.3.1 The Owner shall retain the services of a Construction Manager who will assist the Owner during the Project. The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

§ 2.3.2 The Construction Manager will not be responsible or liable for the acts or omissions of the Architect, Contractor, or any Subcontractor, or any of their agents or employees, or any other person performing any of the Work.

§ 2.3.3 The Construction Manager shall:

§ 2.3.3.1 Review all changes proposed by the Contractor, Architect or Owner and make recommendations to the Owner regarding schedule and cost implications;

§ 2.3.3.2 Schedule and conduct job meetings to be attended by the Contractor and representatives of the Owner and Architect to discuss such matters as procedures, progress, problems and scheduling. Construction Manager shall prepare and distribute minutes of such meetings.

§ 2.3.4 The Construction Manager shall make a review of the Work at such intervals necessary to discharge its duties to the Owner.

§ 2.3.5 The Construction Manager shall meet with the Contractor to review and comment on the Contractor's Construction Schedule.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and Construction Manager's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are subject to prior approval of both the Architect and Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or the

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Construction Manager in the Construction Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, or by any prior course of conduct with the Owner.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require, with a copy to the Construction Manager. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report in writing to the Architect, Owner and Construction Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and Construction Manager may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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§ 3.3.4 The Contractor shall carefully check its own work and that of Subcontractors as the work is being performed. The Contractor shall ensure that incorrect or faulty work is corrected immediately.

§ 3.3.5 The Contractor shall have weekly meetings for the coordination of all subcontractor activities. The Construction Manager and Architect's consultants may be invited to attend by the Contractor, as appropriate.

§ 3.3.6 During the finishing stages of the project, the Contractor shall make frequent inspections of the Work in the presence of the Architect, the Construction Manager and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Contractor shall ensure that incorrect or faulty Work is corrected immediately.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may not make substitutions without the written consent of the Owner, after evaluation by the Architect and the Construction Manager and in accordance with a Change Order or Construction Change Directive. If the Contractor requests a material substitution after execution of the Contract, the Contractor shall retain liability for the performance of the substituted materials or products and shall certify that the substituted materials or products are equal to or better than the original materials or products.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Owner may, by notice in writing, require the Contractor to remove from the Work any employee the Owner deems incompetent, careless or otherwise objectionable.

§ 3.4.4 All work under this Contract shall be performed in a skillful and workmanlike manner in accordance with industry standards.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 The Contractor shall provide the original of, and assign to the Owner at the time of Substantial Completion of the Work, any and all Subcontractor's, Sub-subcontractor's, suppliers' and manufacturer's warranties, guarantees, and maintenance requirements required to maintain all warranties and guarantees, relating to materials and labor used in the Work. These materials shall be assembled in Warranty Manuals and submitted to the Owner through the Construction Manager. The Contractor shall perform the Work in a manner consistent with and so as to preserve any and all such guarantees and warranties. If the Contractor performs warranty work during the warranty period which later is discovered to not have been performed correctly, the Contractor shall repair the work in accordance with Section 12.2.2.3.

§ 3.5.2 In the event that the Contractor, or any of its Subcontractors, performs any subsurface investigations, Contractor shall promptly forward copies of the results or reports of such investigations to the Owner, Construction Manager and Architect.

§ 3.5.3 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract before substantial completion and written acceptance by the Architect or Commissioning Agent, shall not be construed as evidence of the Architect's, Commissioning Agent's, Construction Manager's, or the Owner's acceptance of same, or the commencement of any warranty periods.

§ 3.5.4 The Owner shall have the right of such temporary or trial usage, for such reasonable time as the Owner, Commissioning Agent, or the Architect deem proper.

§ 3.5.5 If the Contractor so elects, it may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Architect's and Commissioning Agent's prior approval and under observation by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner or Commissioning Agent.

§ 3.6 TAXES

All purchases of construction or building materials shall not include Federal Excise Taxes or Colorado State or local sales or use taxes. The Owner's State of Colorado tax identification number is 98-04557. The Owner's Federal Tax Identification Number is 84-6000563.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect, Owner and Construction Manager will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Before the Contractor may spend funds identified in the agreement as an allowance, a Change Order is required to be executed confirming the scope and cost of the work. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall remain on the Project Site, without substitution, until all punch list items have been completed to the satisfaction of the Architect and the Commissioning Agent. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect through the Construction Manager the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect or Owner requires additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule in Primavera file format for the Work compliant with the AGC's Construction Scheduling Guidelines. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Construction Manager's approval. The Architect's and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner, Construction Manager and Architect.

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§ 3.10.4 This Contractor's Construction Schedule will include, but is not limited to, work activities required by each section of the specifications as listed in the Contract Documents to complete the Work. The duration, sequence, cost for each work activity (separate amounts for labor and material), and dependency of the work activity on other work activities will be generated by the Contractor. The Construction Schedule is to be used, among other functions, to provide a comprehensive planning tool for completion of both the Work and the Project. The Contractor will provide regular schedule updates issued in .pdf and native Primavera file formats.

§ 3.10.5 The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the operations of the Owner's own forces.

§ 3.10.6 The Contractor will produce a short interval schedule on major weekly work activities. At each weekly job meeting this schedule will be reviewed by the Contractor with all affected Subcontractors and the Construction Manager.

§ 3.10.7 Delivery and Storage. The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect, with a copy to the Construction Manager, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, Construction Manager, and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Architect has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 To the extent these services are provided on a design-build basis, Fire Protection and Life Safety Systems: All life safety systems and building assemblies shall be designed by a professional engineer licensed in the state of Colorado, and shall be designed, constructed, and installed in accordance with the current applicable Aspen Fire Protection District requirements: NFPA 13, 13D, 13R as applicable; NFPA 72(Alarm Systems); 2003 International Fire Code; all as amended by the AFPD and adopted by the City of Aspen at time of permit submittal. It is the Contractor's sole responsibility to ensure the fire protection sprinkler system is compatible with the water system pressures existing at the Project site.

§ 3.12.12 Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Architect for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely manner and notify the Owner and Construction Manager of these prior to commencing any work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 Protection of construction materials and equipment stored at the Project Site from weather, theft,

vandalism, damage or all other adversity is solely the responsibility of the Contractor and its subcontractors, to the extent that such losses are not covered by builder's risk insurance.

§ 3.13.2 During the performance of the Work required by this Agreement, the Contractor or Subcontractor, will use such entrances to the construction site that may be designated by the Owner. These entrances may be reviewed and changed from time to time by the Owner.

§ 3.13.3 The Owner shall be responsible for snow removal only on public streets which have been dedicated to the City. Snow removal within the site for the purpose of performing and protecting Work shall be the responsibility of the Contractor.

§ 3.13.4 Site Snow Management: Contractor acknowledges that the Project is to be built in an area of heavy seasonal snows. Contractor shall be responsible for site snow removal and designated snow storage areas adequate to store 100% (one hundred percent) of the snow from the site during the snow season.

§ 3.13.5 The Contractor shall erect and maintain a 8'-0" chain link fence around the perimeter of the construction site throughout the Construction Phase. The area inside the perimeter of the fence shall include areas adequate for 100% (one hundred percent) of site snow storage.

§ 3.13.6 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, erosion, fumes, traffic, recycling of construction materials, or other by-product of construction activity that have an adverse effect on the adjacent residents. Such mitigation and/or abatement shall comply with the Aspen Building Department and Aspen Engineering Department's requirement for a Construction Management Plan (CMP), including but not limited to, Dust Control, Erosion Control, traffic management, recycling, mud mitigation and clean up, acoustic noise barriers, and Noise Control.

§ 3.13.7 Erosion Control: Contractor shall prepare and implement a Stormwater Pollution Prevention Plan in accordance with EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from Large and Small Construction Activities. Any mud tracked onto public roadways shall be removed daily.

§ 3.13.8 The Contractor is advised that the project site area is subject to high winds. The Contractor shall maintain all materials secured or tied down daily to prevent possible damage caused by flying materials and debris.

§ 3.13.9 The Contractor shall maintain access around the construction site.

§ 3.13.10 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces. The facilities of the existing buildings will not be available for construction use.

§ 3.13.11 Inappropriate Behavior: The Contractor shall control its employees and subcontractors on the job site at all times. Alcohol and illegal drugs shall be strictly prohibited on the Project at all times. Any intoxicated person(s) shall be immediately removed from the Project. Workers shall dress in an appropriate manner on the Project at all times. Profanity and loud or offensive behavior shall be strictly prohibited, as well as any other activities deemed inappropriate to the Owner. The Owner shall be entitled to demand the permanent removal from the Project of any person(s) who are repeat offenders.

§ 3.13.12 The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Architect and Construction Manager in writing immediately upon completion of this marking. The City of Aspen Parks Department will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 3.13.13 The Contractor shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto. The Contractor acknowledges the Project site is adjacent to existing structures which will be occupied during the performance of the Work.

§ 3.13.14 The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Architect to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall notify the head of the local utility services, the Owner, the Architect, the Construction Manager, and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give notice to such utility users.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and expert witness fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. In the event Contractor is liable for all or any portion of any claim, damages, losses or expenses, Contractor shall reimburse Owner for its reasonable attorneys' fees, expert witness fees, and costs incurred that are attributable to Contractor's pro rata share of liability.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Architect shall designate in writing a representative who shall have express authority to bind the Architect with respect to all matters related to the Project. The term "Architect" means the Architect and the authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, with a copy to the Owner and Architect, about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner or the Construction Manager.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Contractor shall prepare Proposed Change Orders (PCO's) which will be reviewed and recommended by the Construction Manager and the Architect prior to submission to the Owner for acceptance. The Architect will prepare Construction Change Directives. The Architect may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Construction Manager, and to the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Construction Manager, Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Construction Manager, Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Construction Manager, Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Construction Manager, Owner or Architect has no reasonable objection. If, after the Guaranteed Maximum Price has been established, the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Construction Manager, Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor shall, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work with reasonable promptness. Contractor shall submit to the Construction Manager evidence that such orders have been placed.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Construction Manager, Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Construction Manager, Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective

proposed Sub-subcontractors. The Contractor shall furnish to Owner and Construction Manager copies of all subcontractor agreements upon request.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide through the Construction Manager for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with the Construction Manager, other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement with the Construction Manager and the Owner. The Contractor's Construction Schedule, as revised, shall then constitute the schedules to be used by the Contractor, Construction Manager, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner, the Construction Manager, the Architect, and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and the Architect in writing any apparent discrepancies or defects in such other

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construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable through the Contractor's reasonable diligence.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities, failure to properly protect work in place, damage to the Work, or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, failure to properly protect work in place, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 Any increase or decrease to the Contract Time or Schedule resulting from changes to the Contract Documents shall be included in each Change Order. Responses to requests from the Owner, or Claims from the Contractor for an increase in the GMP shall include, if applicable, any request for change of the Contract Time or Schedule and the cost associated therewith. In the absence of an adequately documented request for change of the Contract Time or Schedule included in the request for a Change Order, no subsequent adjustment of the Contract Time or Schedule will be considered relative to such Change Order.

§ 7.1.3 The total allowable overhead and profit on changes in the Work included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, the Contractor's Fee stated in Section 5.1.1.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, the Contractors Fee stated in Section 5.1.1:
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subsection 7.3.7.

§ 7.1.3 Each Change Order request, Construction Change Directive price, or claim submitted by the Contractor shall be accompanied by a complete itemization and quantification of costs including unit rates, labor costs, materials, quantities, subcontracts and markups. Subcontract pricing shall also be itemized and quantified.

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§ 7.1.4 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.5 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- 1 The change in the Work;
- 2 The amount of the adjustment, if any, in the Contract Sum; and
- 3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Notwithstanding anything in the Contract Documents to the contrary, Amendments, Construction Change Directives, or Change Orders shall not be binding on the City without an authorized signature in accordance with the City of Aspen Procurement Code.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement under Section 7.1.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and Contractor shall prepare Proposed Change Orders (PCO's) which will be reviewed and recommended by the Construction Manager and the Architect prior to submission to the Owner for acceptance. The Architect will prepare Construction Change Directives. The Architect may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Construction Manager, and to the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect-Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Construction Manager, Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Construction Manager, Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Construction Manager, Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Construction Manager, Owner or Architect has no reasonable objection. If, after the Guaranteed Maximum Price has been established, the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Construction Manager, Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor shall, after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work with reasonable promptness. Contractor shall submit to the Construction Manager evidence that such orders have been placed.

By appropriate agreement, ~~written where legally required for validity, written agreement,~~ the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Construction Manager, Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Construction Manager, Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. ~~Where appropriate, the~~ The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall furnish to Owner and Construction Manager copies of all subcontractor agreements upon request.

activities deemed inappropriate to the Owner. The Owner shall be entitled to demand the permanent removal from the Project of any person(s) who are repeat offenders.

§ 3.13.12 The Contractor shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Contractor shall notify the Architect and Construction Manager in writing immediately upon completion of this marking. The City of Aspen Parks Department will then give permission for removal in writing to the Contractor. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 3.13.13 The Contractor shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto. The Contractor acknowledges the Project site is adjacent to existing structures which will be occupied during the performance of the Work.

§ 3.13.14 The Contractor shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Architect to proceed has been given to the Contractor. If the utility service must be interrupted, the Contractor shall notify the head of the local utility services, the Owner, the Architect, the Construction Manager, and the utility users affected by the interruption. Such notice shall consist of direct written communication, publication in a local newspaper, and/or announcement on local radio or television stations, whichever is most reasonably calculated to give notice to such utility users.

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and expert witness fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. In the event Contractor is liable for all or any portion of any claim, damages, losses or expenses, Contractor shall reimburse Owner for its reasonable attorneys' fees, expert witness fees, and costs incurred that are attributable to Contractor's pro rata share of liability.

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§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Architect shall designate in writing a representative who shall have express authority to bind the Architect with respect to all matters related to the Project. The term "Architect" means the Architect and the authorized representative.

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Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the ~~Architect~~ Construction Manager, with a copy to the Owner and Architect, about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the ~~Owner~~ the Owner or the Construction Manager.

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Fire Code; all as amended by the AFD and adopted by the City of Aspen at time of permit submittal. It is the Contractor's sole responsibility to ensure the fire protection sprinkler system is compatible with the water system pressures existing at the Project site.

§ 3.12.12 Before ordering any material or doing any Work, the Contractor shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the Architect for consideration before proceeding with the Work. The Contractor shall use its utmost efforts to identify discrepancies in dimensions in a timely manner and notify the Owner and Construction Manager of these prior to commencing any work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 3.13.1 Protection of construction materials and equipment stored at the Project Site from weather, theft, vandalism, damage or all other adversity is solely the responsibility of the Contractor and its subcontractors, to the extent that such losses are not covered by builder's risk insurance.

§ 3.13.2 During the performance of the Work required by this Agreement, the Contractor or Subcontractor, will use such entrances to the construction site that may be designated by the Owner. These entrances may be reviewed and changed from time to time by the Owner.

§ 3.13.3 The Owner shall be responsible for snow removal only on public streets which have been dedicated to the City. Snow removal within the site for the purpose of performing and protecting Work shall be the responsibility of the Contractor.

§ 3.13.4 Site Snow Management: Contractor acknowledges that the Project is to be built in an area of heavy seasonal snows. Contractor shall be responsible for site snow removal and designated snow storage areas adequate to store 100% (one hundred percent) of the snow from the site during the snow season.

§ 3.13.5 The Contractor shall erect and maintain a 8'-0" chain link fence around the perimeter of the construction site throughout the Construction Phase. The area inside the perimeter of the fence shall include areas adequate for 100% (one hundred percent) of site snow storage.

§ 3.13.6 The Contractor shall be responsible for the mitigation and/or abatement of all noise, dust, erosion, fumes, traffic, recycling of construction materials, or other by-product of construction activity that have an adverse effect on the adjacent residents. Such mitigation and/or abatement shall comply with the Aspen Building Department and Aspen Engineering Department's requirement for a Construction Management Plan (CMP), including but not limited to, Dust Control, Erosion Control, traffic management, recycling, mud mitigation and clean up, acoustic noise barriers, and Noise Control.

§ 3.13.7 Erosion Control: Contractor shall prepare and implement a Stormwater Pollution Prevention Plan in accordance with EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from Large and Small Construction Activities. Any mud tracked onto public roadways shall be removed daily.

§ 3.13.8 The Contractor is advised that the project site area is subject to high winds. The Contractor shall maintain all materials secured or tied down daily to prevent possible damage caused by flying materials and debris.

§ 3.13.9 The Contractor shall maintain access around the construction site.

§ 3.13.10 The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces. The facilities of the existing buildings will not be available for construction use.

§ 3.13.11 Inappropriate Behavior: The Contractor shall control its employees and subcontractors on the job site at all times. Alcohol and illegal drugs shall be strictly prohibited on the Project at all times. Any intoxicated person(s) shall be immediately removed from the Project. Workers shall dress in an appropriate manner on the Project at all times. Profanity and loud or offensive behavior shall be strictly prohibited, as well as any other

on other work activities will be generated by the Contractor. The Construction Schedule is to be used, among other functions, to provide a comprehensive planning tool for completion of both the Work and the Project. The Contractor will provide regular schedule updates issued in .pdf and native Primavera file formats.

§ 3.10.5 The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the operations of the Owner's own forces.

§ 3.10.6 The Contractor will produce a short interval schedule on major weekly work activities. At each weekly job meeting this schedule will be reviewed by the Contractor with all affected Subcontractors and the Construction Manager.

§ 3.10.7 Delivery and Storage. The Contractor shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed on the job.

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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the ~~Architect for submittal to the~~ Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the ~~Architect~~ Architect, with a copy to the Construction Manager, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the ~~Owner and the Architect~~ will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The ~~Owner~~ Owner, Construction Manager, and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the ~~Owner and Architect~~ have ~~Architect~~ has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 To the extent these services are provided on a design-build basis, Fire Protection and Life Safety Systems: All life safety systems and building assemblies shall be designed by a professional engineer licensed in the state of Colorado, and shall be designed, constructed, and installed in accordance with the current applicable Aspen Fire Protection District requirements: NFPA 13, 13D, 13R as applicable; NFPA 72(Alarm Systems); 2003 International

authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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- .3 Before the Contractor may spend funds identified in the agreement as an allowance, a Change Order is required to be executed confirming the scope and cost of the work. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall remain on the Project Site, without substitution, until all punch list items have been completed to the satisfaction of the Architect and the Commissioning Agent. No subcontractor shall perform work on the site without the presence of the Superintendent or Assistant Superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect and the Architect through the Construction Manager~~ the name and qualifications of a proposed superintendent. The ~~Architect-Construction Manager~~ may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect ~~or Owner~~ requires additional time to review. Failure of the ~~Architect-Construction Manager~~ to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The Contractor shall designate a second person in charge in writing in the event the Superintendent is temporarily absent due to illness, vacation, or any other cause(s).

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule ~~for the Work, in Primavera file format for the Work~~ compliant with the AGC's Construction Scheduling Guidelines. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Construction Manager's approval. The Architect's and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to ~~the Owner and Architect~~ and approved by the Owner, Construction Manager and Architect.

§ 3.10.4 This Contractor's Construction Schedule will include, but is not limited to, work activities required by each section of the specifications as listed in the Contract Documents to complete the Work. The duration, sequence, cost for each work activity (separate amounts for labor and material), and dependency of the work activity

§ 3.4.4 All work under this Contract shall be performed in a skillful and workmanlike manner in accordance with industry standards.

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§ 3.5.1 The Contractor shall provide the original of, and assign to the Owner at the time of Substantial Completion of the Work, any and all Subcontractor's, Sub-subcontractor's, suppliers' and manufacturer's warranties, guarantees, and maintenance requirements required to maintain all warranties and guarantees, relating to materials and labor used in the Work. These materials shall be assembled in Warranty Manuals and submitted to the Owner through the Construction Manager. The Contractor shall perform the Work in a manner consistent with and so as to preserve any and all such guarantees and warranties. If the Contractor performs warranty work during the warranty period which later is discovered to not have been performed correctly, the Contractor shall repair the work in accordance with Section 12.2.2.3.

§ 3.5.2 In the event that the Contractor, or any of its Subcontractors, performs any subsurface investigations, Contractor shall promptly forward copies of the results or reports of such investigations to the Owner, Construction Manager and Architect.

§ 3.5.3 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract before substantial completion and written acceptance by the Architect or Commissioning Agent, shall not be construed as evidence of the Architect's, Commissioning Agent's, Construction Manager's, or the Owner's acceptance of same, or the commencement of any warranty periods.

§ 3.5.4 The Owner shall have the right of such temporary or trial usage, for such reasonable time as the Owner, Commissioning Agent, or the Architect deem proper.

§ 3.5.5 If the Contractor so elects, it may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Architect's and Commissioning Agent's prior approval and under observation by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner or Commissioning Agent.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. All purchases of construction or building materials shall not include Federal Excise Taxes or Colorado State or local sales or use taxes. The Owner's State of Colorado tax identification number is 98-04557. The Owner's Federal Tax Identification Number is 84-6000563.

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§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect-Architect, Owner and Construction Manager will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner-Owner, Construction Manager and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental

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§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or the Construction Manager in the Construction Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, Contractor, or by any prior course of conduct with the Owner.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require-require, with a copy to the Construction Manager. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect in writing to the Architect, Owner and Construction Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and Construction Manager may require.

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§ 3.3.4 The Contractor shall carefully check its own work and that of Subcontractors as the work is being performed. The Contractor shall ensure that incorrect or faulty work is corrected immediately.

§ 3.3.5 The Contractor shall have weekly meetings for the coordination of all subcontractor activities. The Construction Manager and Architect's consultants may be invited to attend by the Contractor, as appropriate.

§ 3.3.6 During the finishing stages of the project, the Contractor shall make frequent inspections of the Work in the presence of the Architect, the Construction Manager and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work. The Contractor shall ensure that incorrect or faulty Work is corrected immediately.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may not make substitutions only-with-the-without the written consent of the Owner, after evaluation by the Architect and the Construction Manager and in accordance with a Change Order or Construction Change Directive. If the Contractor requests a material substitution after execution of the Contract, the Contractor shall retain liability for the performance of the substituted materials or products and shall certify that the substituted materials or products are equal to or better than the original materials or products.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Owner may, by notice in writing, require the Contractor to remove from the Work any employee the Owner deems incompetent, careless or otherwise objectionable.

~~§ 2.1.2~~ The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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§ 2.2.6 The Owner shall furnish the services of a Commissioning Agent who will assist the Owner, as well as conduct inspections and prepare commissioning reports during the construction phase. The Contractor shall be required to correct any deficiencies identified by the Commissioning Agent.

§ 2.2.10 The Owner shall furnish the services of a Material Testing Firm, who will provide inspections and material testing reports during the construction phase.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK CONSTRUCTION MANAGER

§ 2.3.1 The Owner shall retain the services of a Construction Manager who will assist the Owner during the Project. The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

§ 2.3.2 The Construction Manager will not be responsible or liable for the acts or omissions of the Architect, Contractor, or any Subcontractor, or any of their agents or employees, or any other person performing any of the Work.

§ 2.3.3 The Construction Manager shall:

§ 2.3.3.1 Review all changes proposed by the Contractor, Architect or Owner and make recommendations to the Owner regarding schedule and cost implications;

§ 2.3.3.2 Schedule and conduct job meetings to be attended by the Contractor and representatives of the Owner and Architect to discuss such matters as procedures, progress, problems and scheduling. Construction Manager shall prepare and distribute minutes of such meetings.

§ 2.3.4 The Construction Manager shall make a review of the Work at such intervals necessary to discharge its duties to the Owner.

§ 2.3.5 The Construction Manager shall meet with the Contractor to review and comment on the Contractor's Construction Schedule.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and Construction Manager's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, both the Architect and Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Where a conflict occurs between or within standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence and coordination of the Contract Documents are as follows:

.1 Addendum and modifications to the Drawings and Specifications take precedence over the original Contract Documents.

.2 Should there be a conflict within the Specifications, or within the Drawings, or between the Drawings and Specification, the Architect shall decide which condition will provide the best installation and his/her decision shall be final.

.3 The Drawing and Specifications are intended to coordinate with each other. Anything shown on the Drawings but not mentioned in the Specification or vice-versa, shall be furnished as though specifically shown and mentioned in both without any extra charge.

.4 The Drawings, for purposes of clearness and legibility, are essentially diagrammatic, and although the sizes and locations of equipment are shown to scale wherever possible, the Contractors, both principal and subcontractors, are required to familiarize themselves with all the Work required by the Contract Documents. Each Contractor shall properly coordinate his/her work with that of all other contractors. It is not within the scope of the Drawings to show all necessary offsets, obstructions or structural conditions. It shall be the responsibility of each Contractor to plan, coordinate, and install his/her work in such a manner so as to conform to the structure. Any conflict within the Drawings shall be referred to the Architect for disposition prior to the installation of any affected work.

.5 Figured dimensions contained in the Contract Documents shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Architect as to the dimensions to be used. Larger scale Drawings shall have preference over smaller scale drawings, but discrepancies shall be referred to the Architect for interpretation.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, ~~and will retain except to the extent that they have assigned to the Owner~~ all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Notwithstanding the previous sentence, or any information in the Contract Documents to the contrary, the original Contract, and the approval of increases in the Contract Sum or Contract Time, and the execution of Amendments and Change Orders to the Agreement shall not be binding on the City without an authorized signature in accordance with the City of Aspen Procurement Code. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative, except as otherwise indicated above.

~~2.3, 2.4, 2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14, 15.2.8, 15.4.1~~

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between the Contractor and the Construction Manager, or (5) between any persons or entities other than the Owner and the Contractor. The ~~Architect-Owner~~ shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

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PAGE 1

(Name and location or address)

City of Aspen Building Replacement Project
540 E. Main Street, Rio Grande Place, and Armory Building
Aspen, Colorado 81611

...

(Name, legal status and address)

City of Aspen
130 South Galena Street
Aspen, Colorado 81611

...

THE ARCHITECT:

Charles Cunniffe Architects, P.C.
610 E. Hyman Avenue
Aspen, Colorado 81611

THE CONTRACTOR:

Shaw Construction LLC
760 Horizon Drive, Unit 201
Grand Junction, CO 81506
Phone: (970) 242-9236
Contact: Steve H. Meyer

THE CONSTRUCTION MANAGER:

NV5 Inc.
2650 18th Street, Suite
Denver, Colorado 80211
Phone: (720) 201-6373
Contact: John Bills

THE COMMISSIONING AGENT:

(Name, legal status and address) Ambient Energy
130 W. 5th Avenue
Denver, CO 80204
Phone: (303) 278-1532
Contact: Tracey A. Whaley

.3 "Public Contract for Services" means this Agreement.

.4 "Services" means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

§ 17.3 By signing this document, Contractor certifies and represents that at this time:

.1 Contractor shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services; and

.2 Contractor has participated or attempted to participate in either the e-verify program or the department program in order to verify that new employees are not illegal aliens.

§ 17.4 Contractor hereby confirms that:

.1 Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

.2 Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

.3 Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program.

.4 Contractor shall not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

.5 If Contractor obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with an illegal alien, Contractor shall:

.1 Notify such subcontractor and the Owner within three days that Contractor has actual knowledge that the subcontractor is employing or subcontracting with an illegal alien; and

.2 Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

.6 Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

.7 If Contractor violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Owner may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual damages to the Owner arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

(Paragraph deleted)

Init.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Aspen, Colorado. Written agreements, executed by the parties, reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

§ 15.4 LITIGATION

§ 15.4.1 **Litigation.** This Contract, and all matters interpreting it and arising under it shall be enforced in, and all parties do now submit to, the exclusive jurisdiction and venue of the District Court, City and County of Pitkin, State of Colorado, in the event of any litigation concerning this Contract, and regardless of where this Contract may be executed. Each party consents to and agrees to file a general appearance in the event that it receives service of process.

§ 15.4.2 **Jury Trial Waiver.** To the fullest extent permitted by law, Owner and Contractor specifically waive any right to a trial by jury in any court with respect to any contractual, tortious or statutory claim, counterclaim or cross-claim against the other arising out of or connected in any way to the project or the Contract Documents. The complex commercial and professional aspects of the Contract make a jury determination neither desirable nor appropriate. Contractor shall include this provision in all of its subcontracts and purchase orders.

§ 15.4.3 **Removal Waiver.** To the fullest extent permitted by law, Owner and Contractor specifically waive any right to remove any action to United States District Court for the District of Colorado, regardless of the presence of diversity of citizenship among or between the parties. Contractor shall include this provision in all of its subcontracts and purchase orders.

§ 15.4.4 **Attorneys Fees:** In the event that either party brings legal action to enforce any provision of this Contract, the prevailing party shall be awarded all of its reasonable costs and expenses, including attorney's fees, incurred by such party in connection with such action.

ARTICLE 16 OWNER'S ADDITIONAL SPECIFIC CONCERNS

§ 16.1 Notwithstanding the above, the Owner has a unique set of stakeholders with which the Owner must cooperate and coordinate. The Contractor shall cooperate with the Owner and the Owner's stakeholders throughout the Project when requested by the Owner.

1. The Contractor shall participate once per month in a progress meeting with the Owner, including a walk-through of the site.
2. The Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Construction Manager.

ARTICLE 17 Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101

§ 17.1 **Purpose.** During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the Owner, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a Contractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

§ 17.2 **Definitions.** The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the Owner.

1. "E-verify program" means the electronic employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is jointly administered by the United States Department of Homeland Security and the social security Administration, or its successor program.
- .2 "Department program" means the employment verification program established pursuant to Section 8-17.5-102(5)(c).

Init.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to litigation. Venue and jurisdiction for any suit brought to enforce the terms of this Agreement shall be in Pitkin County District Court, State of Colorado.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the Judicial Arbitrator Group, Denver, Colorado, in accordance with the Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation proceedings but, in such event, mediation shall proceed within 60 days from the date of filing, unless stayed for a longer period by agreement of the parties.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager, including Claims under section 3.2.4. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 Claims against the Owner shall be in the form of a written notice containing the name and address of the claimant, and the name and address of the attorney, if any; a concise statement of the basis of the claim, including the date, time, place, and circumstance of the act, omission, or event complained of; a concise statement of the nature and extent of the injury claimed to have been suffered; and a statement of the amount of monetary damages that is being requested.

§ 15.1.4 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.5 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.1 In no event shall adjustment to the Contract Sum be made for conditions of which the Contractor knew or should have been known, or which would have been noticed by a Contractor of similar experience pursuant to on-site inspection, by conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor, which have been performed by the Contractor or its subcontractors, or are part of the Contract Documents used in constructing the improvements.

(Paragraph deleted)

§ 15.1.6 CLAIMS FOR ADDITIONAL TIME

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.5.3 Extensions of the Contract Time for delays due to weather conditions may be made only when such conditions are more severe and extended than those reflected by the ten-year average for the month as evidenced by the Colorado Climate Data maintained by Colorado State University, Fort Collins, Colorado, or other data as mutually agreed between Owner and Contractor, for the project area. Extensions of time due to weather will be granted on the basis of one-and-four-tenths (1.4) calendar days added for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the Contract Time for weather conditions will occur only in the event that the weather in question impacted activities on the critical path of the Contractor's current Construction Schedule.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 14.2.4.1 If the Owner terminates the Contract for cause under Article 14.2, the amount, if any, to be paid to the Contractor under Section 14.2.4 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include an equitable adjustment of the Contractor's fee on any services performed or Work completed. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed.

§ 14.4.4 In the event of any termination by the Owner, the Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

made payment on a Certificate for Payment for undisputed amounts properly due within the time stated in the Contract Documents; or

- 4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may provide written notice to the Owner and Architect of such condition or failure. If Owner fails to make such payment or correct such condition within fourteen (14) days of receipt of such notice, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on the work completed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- 1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- 4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- 1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- 2 Accept assignment of subcontracts pursuant to Section 5.4; and
- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. If a termination by the Owner is subsequently determined to be wrongful, such termination shall automatically be converted to a termination for the Owner's convenience.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later. Aspen Municipal Code Sec. 4.16.070. Interest.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable Colorado law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the respective persons at the addresses listed below.

Owner:

City Manager
City of Aspen
130 South Galena Street
Aspen, Colorado 81611

Contractor:

Shaw Construction LLC
760 Horizon Drive, Unit 201
Grand Junction, CO 81506
Phone: (970) 242-9236
Contact: Steve H. Meyer

Architect:

Charles Cunniffe, Principal
Charles Cunniffe Architects, P.C.
610 E. Hyman Avenue
Aspen, Colorado 81611

Construction Manager:

NV5 Inc.
2650 18th Street, Suite
Denver, Colorado 80211
Phone: (720) 201-6373
Contact: John Bills

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

Architect's and Commissioning Agent's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.1.1 Should the warranty issue involve a leak, water ingress, flooding, hazardous material, potential for increased damage to the building, or adversely affect the building occupants, the Contractor must begin to correct the issue **immediately** to prevent further damage and within 48 hours have rectified the problem, or have a clear work plan for the long term rectification of the issue to comply with the Contract Documents. The Contractor shall provide detailed documentation demonstrating repair or replacement of all warranty items.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The two-year period for correction of Work shall be extended for any corrective Work performed by the Contractor pursuant to this Section 12.2. The obligation to correct the Work shall include any repairs and replacement to any part of the Work or other property that is damaged by the defective Work. However in no instance shall the duty to correct, repair or replace the Work provided under this section exceed a duration of three (3) years from the date of Substantial Completion.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 11.3.8 A loss insured under the property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined by Court Order. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder each in the amount of the full Contract Sum on the date of execution of the Contract. Such bonds shall be issued by a surety company licensed in Colorado with an A.M. Best rating of at least A-, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The bond forms shall be Performance Bond - AIA Document A312-2010, and Payment Bond - AIA Documents A310-2010, including a certified Power of Attorney.

§ 11.4.4 Performance and Payment Bonds may be required by the Owner, at the Owner's sole discretion, from subcontractors. If the Owner requests or approves performance and payment bonds from subcontractors, then the Owner will pay such actual, additional expenditures as Cost of the Work.

§ 11.4.5 The Contractor shall also furnish maintenance bonds as required under the GMP Documents.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Construction Manager or the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Commissioning Agent or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's,

§ 11.3.1.1 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 Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Omitted.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor may include such insurance, and the cost thereof shall be submitted to the Owner for a determination regarding incorporating the cost into the GMP..

§ 11.3.5 Omitted.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Article 11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Construction Manager, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Construction Manager, and the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 Limits of Insurance:

See AIA A102-2007, Article 17, for limits of insurance.

§ 11.1.6 **Failure to maintain insurance:** Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this contract, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against monies due from Owner.

§ 11.1.7 **Insurance Policies:** Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

§ 11.1.8 **Governmental immunity:** The parties hereto understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to Owner, its officers, or its employees.

§11.1.9 **Owner's Insurance:** The parties hereto understand that the Owner is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Finance Department and are available to Contractor for inspection during normal business hours. Owner makes no representations whatsoever with respect to specific coverages offered by CIRSA. Owner shall provide reasonable notice of any changes in its membership or participation in CIRSA.

§11.1.10 **Deductible:** The Contractor shall pay any amounts not covered because of a deductible.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, 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 Amendments, and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. 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 as provided in Section 9.10. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

The Construction Manager, Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Omitted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Omitted.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for the statute of repose for the Work under Colorado law.

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not use or store explosives or other hazardous materials or equipment on the Project without the advance written consent of the Owner after 15 (fifteen) days written notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager, Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance, a Final Certificate of Occupancy has been obtained on each building, and upon receipt of a final Application for Payment, the Construction Manager will schedule the Architect and Commissioning Agent to promptly make such inspection and, when the Architect and Commissioning Agent find the Work acceptable under the Contract Documents, the closure of all punch list items, and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claim. If such claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager or Architect so confirm, the Owner shall, upon application by the Contractor, or recommendation by the Construction Manager, and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;

item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Commissioning Agent will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Commissioning Agent's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Commissioning Agent. In such case, the Contractor shall then submit a request for another inspection by the Architect or Commissioning Agent to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for 200% of the value of the Work that is incomplete or not in accordance with the requirements of the Contract Documents. The value of the incomplete or noncompliant Work shall be based on the Cost to the Owner to complete or repair the Work using other Contractors.

§ 9.8.6 The Contractor shall provide a digital video record of all Owner staff training and commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 9.8.7 The Contractor shall furnish the Owner "As-built Record Drawings" on CD disk using AutoCAD Version 2004 or later, and one full set of pdf/electronic files. The Architect shall furnish one set of the original bidding documents to the Contractor for this work as "backgrounds" in electronic media as described above. Record Specifications shall be similarly modified, using the latest version of MS Word Windows XP. The Contractor shall furnish the Owner "As-built Record Drawings" on compact disk at Final Completion. The Contractor shall furnish a certified and Colorado licensed stamped Drainage Certificate that meets the City of Aspen's Engineering requirements.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Construction Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Commissioning Agent, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and carefully document the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.5.4 The Contractor shall not stop work or terminate the Contract if the Architect should refuse to issue certification under Section 9.5 or its subsections or any other portion of the General Conditions as supplemented herein.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Contractor shall provide evidence to the Owner that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work, beginning with the second Application for Payment. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon fifteen (15) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an

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best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents, and that the As-Built Record Drawings are updated in electronic format, and that the Contractor's Construction Schedule is updated, through the date of the Application for Payment. The foregoing representations are subject to the Architect's evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner and Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Retainage of five percent (5%) will be withheld.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner with a copy to the Construction Manager as provided in Section 9.4.1. If the Contractor, Construction Manager, and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents, or
- .8 contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws; or
- .9 failure to maintain current As-Built Record Drawings in electronic format; or
- .10 failure to maintain a current, updated Construction Schedule; or
- .11 failure of the Contractor to comply with provisions of the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. In the event the Architect nullifies a previously issued Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had paid pursuant to the nullified Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until the reasons for nullification of the previously issued project Certificate for Payment have been remedied.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, through the Construction Manager, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect, Owner and Construction Manager may require. The Schedule of Values shall include a separate line item for monthly updating of the As-Built Record Drawings in electronic format. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such stored materials and equipment, which must be properly labeled with the Project identification, must be in a bonded warehouse, must be available for inspection by the Architect and Construction Manager, and must be accompanied by documentary evidence as to quantity and value of materials, including insurance on the materials as evidenced by a Certificate of Insurance, or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Evidence of payment for all work included in previous payments to the Contractor shall be provided in writing from each subcontractor and material supplier.

§ 9.3.4 As a condition precedent to payment, the Contractor shall demonstrate that the As-Built Record Drawings are updated in electronic format, and the Contractor's Construction Schedule is updated, through the date of the Application for Payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 The Contractor shall begin the Work within five (5) days of the date of commencement in the Notice to Proceed. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion, and Final Completion within the times stated in the Contract Documents.

§ 8.2.5 In the event that the Contractor fails, or appears likely to fail, to complete a Contractual Milestone or completion date as evidenced by the latest update of the Contractor's Construction Schedule, through no fault of the Owner or Architect or Construction Manager, or any of their employees, the Owner shall have the right to impose any or all of the following options:

§ 8.2.5.1 Require the Contractor to prepare a Recovery Plan to get back on schedule within ten (10) days.

§ 8.2.5.1.1 If the Recovery Plan proposed by the Contractor does not reflect completion of the Project by the applicable Contractual Milestone or completion dates in the current Contractor's Schedule, as adjusted, the Owner may unilaterally establish a Recovery Plan and the Contractor shall comply therewith, and/or the Construction Manager may require the Contractor to take any of the actions set forth below and its subsections without additional cost to the Owner, Construction Manager, or Architect, to makeup the lag in scheduled progress.

§ 8.2.5.2 Require the Contractor to increase its work force, work overtime, and/or extra shifts, and do whatever else is required by the Owner until Contractor gets back on schedule as established by the Contractor's Construction Schedule (including any updates thereto), such measures being at no extra cost to Owner.

§ 8.2.5.3 Withhold progress payment in accordance with Section 9.5.1.

§ 8.2.5.4 Contact or visit any factory, plant or distribution center whose production or delivery schedule may be causing a delay to the scheduled completion of the Work, and expedite same, at Contractor's expense.

§ 8.2.5.5 Failure of the Contractor to substantially comply with the requirements of Section 8.2.5 shall be grounds for a determination by the Owner that the Contractor is in breach of this Contract by failing to prosecute the Work to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, Construction Manager, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes that the Architect or Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine. This provision shall not affect or limit the Owner's rights against any party other than the Contractor.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, related to the Work; and
- .5 Additional actual costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Prior to issuing a Minor Change, the Architect shall notify the Owner, Construction Manager, and the Contractor of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the Contract Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. If the Contractor should determine that the proposed directive will increase the cost and time of completion of the Work, or impact the Contractor's ability to construct the work in accordance with the revised Contract Documents, then the Contractor shall so notify the Owner, Construction Manager, and the Architect. The Contractor shall not proceed without an approved Change Order or Construction Change Directive.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

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§ 6.1.3 The Owner shall provide through the Construction Manager for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with the Construction Manager, other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. ~~The construction schedules agreement with the Construction Manager and the Owner. The Contractor's Construction Schedule, as revised,~~ shall then constitute the schedules to be used by the Contractor, Construction Manager, separate contractors and the Owner until subsequently revised.

§ 6.2.1 The Contractor shall afford the ~~Owner~~ Owner, the Construction Manager, the Architect, and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities; and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and the Architect in writing any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably ~~discoverable~~ discoverable through the Contractor's reasonable diligence.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed ~~activities~~ activities, failure to properly protect work in place, damage to the Work, or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, failure to properly protect work in place, damage to the Work or defective construction.

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Construction Manager will allocate the cost among those responsible.

§ 7.1.2 ~~A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. Any increase or decrease to the Contract Time or Schedule resulting from changes to the Contract Documents shall be included in each Change Order. Responses to requests from the Owner, or Claims from the Contractor for an increase in the GMP shall include, if applicable, any request for change of the Contract Time or Schedule and the cost associated therewith. In the absence of an adequately documented request for change of the Contract Time or Schedule included in the request for a Change Order, no subsequent adjustment of the Contract Time or Schedule will be considered relative to such Change Order.~~

§ 7.1.3 ~~Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. The total allowable overhead and profit on changes in the Work included in the total cost to the Owner shall be based on the following schedule:~~

.1 For the Contractor, for Work performed by the Contractor's own forces, the Contractor's Fee stated in Section 5.1.1.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor, the Contractors Fee stated in Section 5.1.1.

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor's own forces, ten percent (10%) of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subsection 7.3.7.

§ 7.1.3 Each Change Order request, Construction Change Directive price, or claim submitted by the Contractor shall be accompanied by a complete itemization and quantification of costs including unit rates, labor costs, materials, quantities, subcontracts and markups. Subcontract pricing shall also be itemized and quantified.

§ 7.1.4 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.5 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

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§ 7.2.2 Notwithstanding anything in the Contract Documents to the contrary, Amendments, Construction Change Directives, or Change Orders shall not be binding on the City without an authorized signature in accordance with the City of Aspen Procurement Code.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Construction Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, Agreement under Section 7.1.3, the Contractor shall keep and present, in such form as the ~~Architect~~ Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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- .4 Costs of premiums for all bonds and insurance, permit fees, and ~~sales, use or similar taxes~~ related to the Work; and
- .5 Additional actual costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~ Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

...

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. Prior to issuing a Minor Change, the Architect shall notify the Owner, Construction Manager, and the Contractor of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the Contract Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. If the Contractor should determine that the proposed directive will increase the cost and time of completion of the Work, or impact the Contractor's ability to construct the work in accordance with the revised Contract Documents, then the Contractor shall so notify the Owner, Construction Manager, and the Architect. The Contractor shall not proceed without an approved Change Order or Construction Change Directive.

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§ 8.2.4 The Contractor shall begin the Work within five (5) days of the date of commencement in the Notice to Proceed. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion, and Final Completion within the times stated in the Contract Documents.

§ 8.2.5 In the event that the Contractor fails, or appears likely to fail, to complete a Contractual Milestone or completion date as evidenced by the latest update of the Contractor's Construction Schedule, through no fault of the Owner or Architect or Construction Manager, or any of their employees, the Owner shall have the right to impose any or all of the following options:

§ 8.2.5.1 Require the Contractor to prepare a Recovery Plan to get back on schedule within ten (10) days.

§ 8.2.5.1.1 If the Recovery Plan proposed by the Contractor does not reflect completion of the Project by the applicable Contractual Milestone or completion dates in the current Contractor's Schedule, as adjusted, the Owner may unilaterally establish a Recovery Plan and the Contractor shall comply therewith, and/or the Construction Manager may require the Contractor to take any of the actions set forth below and its subsections without additional cost to the Owner, Construction Manager, or Architect, to makeup the lag in scheduled progress.

§ 8.2.5.2 Require the Contractor to increase its work force, work overtime, and/or extra shifts, and do whatever else is required by the Owner until Contractor gets back on schedule as established by the Contractor's Construction Schedule (including any updates thereto), such measures being at no extra cost to Owner.

§ 8.2.5.3 Withhold progress payment in accordance with Section 9.5.1.

§ 8.2.5.4 Contact or visit any factory, plant or distribution center whose production or delivery schedule may be causing a delay to the scheduled completion of the Work, and expedite same, at Contractor's expense.

§ 8.2.5.5 Failure of the Contractor to substantially comply with the requirements of Section 8.2.5 shall be grounds for a determination by the Owner that the Contractor is in breach of this Contract by failing to prosecute the Work to ensure its completion within both the Contract Time and the updated Contractor's Construction Schedule.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, Construction Manager, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, transportation, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; mediation; or by other causes that the Architect or Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine. This provision shall not affect or limit the Owner's rights against any party other than the Contractor.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, Architect and Owner, through the Construction Manager, before the first Application for Payment, a

schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect may require.~~ Architect, Owner and Construction Manager may require. The Schedule of Values shall include a separate line item for monthly updating of the As-Built Record Drawings in electronic format. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect and Construction Manager~~ an itemized Application for Payment prepared in accordance with the schedule of values, ~~if required values~~ under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the ~~Owner~~ Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such ~~materials and equipment stored~~ materials and equipment, which must be properly labeled with the Project identification, must be in a bonded warehouse, must be available for inspection by the Architect and Construction Manager, and must be accompanied by documentary evidence as to quantity and value of materials, including insurance on the materials as evidenced by a Certificate of Insurance, or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Evidence of payment for all work included in previous payments to the Contractor shall be provided in writing from each subcontractor and material supplier.

§ 9.3.4 As a condition precedent to payment, the Contractor shall demonstrate that the As-Built Record Drawings are updated in electronic format, and the Contractor's Construction Schedule is updated, through the date of the Application for Payment.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract ~~Documents.~~ Documents, and that the As-Built Record Drawings are updated in electronic format, and that the Contractor's Construction Schedule is updated, through the date of the Application for Payment. The foregoing representations are subject to ~~an the Architect's~~ the Architect's evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner and Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material

suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Retainage of five percent (5%) will be withheld.

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§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner with a copy to the Construction Manager as provided in Section 9.4.1. If the Contractor, Construction Manager, and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

...

- .7 repeated failure to carry out the Work in accordance with the Contract Documents, or
- .8 contractor's failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws; or
- .9 failure to maintain current As-Built Record Drawings in electronic format; or
- .10 failure to maintain a current, updated Construction Schedule; or
- .11 failure of the Contractor to comply with provisions of the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. In the event the Architect nullifies a previously issued Certificate for Payment, and the Owner has, prior to such nullification, paid thereon, the Contractor shall promptly reimburse to the Owner amounts the latter had paid pursuant to the nullified Certificate for Payment. Alternately, the Owner may withhold payment in any subsequent Application for Payment, until the reasons for nullification of the previously issued project Certificate for Payment have been remedied.

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§ 9.5.4 The Contractor shall not stop work or terminate the Contract if the Architect should refuse to issue certification under Section 9.5 or its subsections or any other portion of the General Conditions as supplemented herein.

...

§ 9.6.2.1 The Contractor shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Contractor for deficiencies solely attributable to the Contractor shall not be grounds for the Contractor to withhold sums due to any Subcontractor.

§ 9.6.3 The Architect-Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor-Contractor shall provide evidence to the Owner that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work-Work, beginning with the second Application for Payment. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

...
§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments~~ Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held in trust by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. ~~Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

...
If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the ~~Architect or awarded by binding dispute resolution, Architect,~~ then the Contractor may, upon ~~seven~~ fifteen (15) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

...
§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Commissioning Agent will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Commissioning Agent's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the ~~Architect, Architect or Commissioning Agent.~~ In such case, the Contractor shall then submit a request for another inspection by the Architect or Commissioning Agent to determine Substantial Completion.

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§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for 200% of the value of the Work that is incomplete or not in accordance with the requirements of the Contract Documents. The value of the incomplete or noncompliant Work shall be based on the Cost to the Owner to complete or repair the Work using other Contractors.

§ 9.8.6 The Contractor shall provide a digital video record of all Owner staff training and commissioning of equipment. These videos will become a permanent part of all Operations and Maintenance manuals as applicable.

§ 9.8.7 The Contractor shall furnish the Owner "As-built Record Drawings" on CD disk using AutoCAD Version 2004 or later, and one full set of pdf/electronic files. The Architect shall furnish one set of the original bidding documents to the Contractor for this work as "backgrounds" in electronic media as described above. Record Specifications shall be similarly modified, using the latest version of MS Word Windows XP. The Contractor shall furnish the Owner "As-built Record Drawings" on compact disk at Final Completion. The Contractor shall furnish a certified and Colorado licensed stamped Drainage Certificate that meets the City of Aspen's Engineering requirements.

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Construction Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Commissioning Agent, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and ~~record~~ carefully document the condition of the Work.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and ~~acceptance~~ acceptance, a Final Certificate of Occupancy has been obtained on each building, and upon receipt of a final Application for Payment, the ~~Architect will~~ Construction Manager will schedule the Architect and Commissioning Agent to promptly make such inspection and, when the Architect finds and Commissioning Agent find the Work acceptable under the Contract Documents, the closure of all punch list items, and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of ~~liens~~, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such ~~lien-claim~~. If such ~~lien-claim~~ remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such ~~lien-claim~~, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager or Architect so confirms, confirm, the Owner shall, upon application by the ~~Contractor~~ Contractor, or recommendation by the Construction Manager, and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment.

Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not use or store explosives or other hazardous materials or equipment on the Project without the advance written consent of the Owner after 15 (fifteen) days written notice.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager, Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager, Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~Omitted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~Omitted.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for ~~correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents~~ the statute of repose for the Work under Colorado law.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Construction Manager, and the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5. Limits of Insurance:

See AIA A102-2007, Article 17, for limits of insurance.

§ 11.1.6 Failure to maintain insurance: Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this contract, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against monies due from Owner.

§ 11.1.7 Insurance Policies: Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

§ 11.1.8 Governmental Immunity: The parties hereto understand and agree that Owner is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Owner, its officers, or its employees.

§11.1.9 Owner's Insurance: The parties hereto understand that the Owner is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Finance Department and are available to Contractor for inspection during normal business hours. Owner makes no representations whatsoever with respect to specific coverages offered by CIRSA. Owner shall provide reasonable notice of any changes in its membership or participation in CIRSA.

§11.1.10 Deductible: The Contractor shall pay any amounts not covered because of a deductible.

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§ 11.3.1 Unless otherwise provided, the ~~Owner-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 Amendments, 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 basis~~. 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 as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. ~~9.10~~. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. Omitted.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner-Contractor shall pay costs not covered because of such deductibles.

...
The Owner-Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

...
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, Contractor may include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order submitted to the Owner for a determination regarding incorporating the cost into the GMP.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. Omitted.

§ 11.3.6 Before an exposure to loss may occur, the Owner-Contractor shall file with the Contractor-Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Article 11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor-Owner.

...
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary-Owner. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Construction Manager, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a

person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor by Court Order. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

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§ 11.4.1 ~~The Owner shall have the right to require the Contractor to~~ Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents each in the amount of the full Contract Sum on the date of execution of the Contract. Such bonds shall be issued by a surety company licensed in Colorado with an A.M. Best rating of at least A-, included on the U.S. Treasury Department's listing of approved sureties, and acceptable to the Owner.

§ 11.4.3 The bond forms shall be Performance Bond - AIA Document A312-2010, and Payment Bond - AIA Documents A310-2010, including a certified Power of Attorney.

§ 11.4.4 Performance and Payment Bonds may be required by the Owner, at the Owner's sole discretion, from subcontractors. If the Owner requests or approves performance and payment bonds from subcontractors, then the Owner will pay such actual, additional expenditures as Cost of the Work.

§ 11.4.5 The Contractor shall also furnish maintenance bonds as required under the GMP Documents.

...
§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Construction Manager or the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

...

The Contractor shall promptly correct Work rejected by the Architect or Commissioning Agent or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's, Architect's and Commissioning Agent's services and expenses made necessary thereby, shall be at the Contractor's expense.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one year~~ two year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty-Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.1.1 Should the warranty issue involve a leak, water ingress, flooding, hazardous material, potential for increased damage to the building, or adversely affect the building occupants, the Contractor must begin to correct the issue immediately to prevent further damage and within 48 hours have rectified the problem, or have a clear work plan for the long term rectification of the issue to comply with the Contract Documents. The Contractor shall provide detailed documentation demonstrating repair or replacement of all warranty items.

§ 12.2.2.2 The ~~one year~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The ~~one year~~ two-year period for correction of Work shall ~~not~~ be extended by for any corrective Work performed by the Contractor pursuant to this Section 12.2. The obligation to correct the Work shall include any repairs and replacement to any part of the Work or other property that is damaged by the defective Work. However in no instance shall the duty to correct, repair or replace the Work provided under this section exceed a duration of three (3) years from the date of Substantial Completion.

...

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, ~~the last business address known to the party giving notice.~~ to the respective persons at the addresses listed below.

Owner:

City Manager
City of Aspen
130 South Galena Street
Aspen, Colorado 81611

Contractor:

Shaw Construction LLC
760 Horizon Drive, Unit 201
Grand Junction, CO 81506
Phone: (970) 242-9236
Contact: Steve H. Meyer

Architect:

Charles Cunniffe, Principal
Charles Cunniffe Architects, P.C.
610 E. Hyman Avenue
Aspen, Colorado 81611

Construction Manager:

NV5 Inc.
2650 18th Street, Suite
Denver, Colorado 80211
Phone: (720) 201-6373
Contact: John Bills

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later. Aspen Municipal Code Sec. 4.16.070. Interest.

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Colorado law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

...

- 3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment for undisputed amounts properly due within the time stated in the Contract Documents; or

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§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may provide written notice to the Owner and Architect of such condition or failure. If Owner fails to make such payment or correct such condition within fourteen (14) days of receipt of such notice, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work

executed, including reasonable overhead and profit, and profit on the work completed, and costs incurred by reason of such termination, and damages-termination.

...

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. If a termination by the Owner is subsequently determined to be wrongful, such termination shall automatically be converted to a termination for the Owner's convenience.

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§ 14.2.4.1 If the Owner terminates the Contract for cause under Article 14.2, the amount, if any, to be paid to the Contractor under Section 14.2.4 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit, an equitable adjustment of the Contractor's fee on any services performed or Work completed. No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed-executed.

§ 14.4.4 In the event of any termination by the Owner, the Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

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Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Construction Manager, including Claims under section 3.2.4. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue

Certificates for Payment in accordance with the decisions of the Initial Decision Maker. Claims against the Owner shall be in the form of a written notice containing the name and address of the claimant, and the name and address of the attorney, if any; a concise statement of the basis of the claim, including the date, time, place, and circumstance of the act, omission, or event complained of; a concise statement of the nature and extent of the injury claimed to have been suffered; and a statement of the amount of monetary damages that is being requested.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST/CONTINUING CONTRACT PERFORMANCE

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME/CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. In no event shall adjustment to the Contract Sum be made for conditions of which the Contractor knew or should have been known, or which would have been noticed by a Contractor of similar experience pursuant to on-site inspection, by conditions referenced in any other inspections or tests concerning the site which have been made available to the Contractor, which have been performed by the Contractor or its subcontractors, or are part of the Contract Documents used in constructing the improvements.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES/CLAIMS FOR ADDITIONAL TIME

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes § 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.5.3 Extensions of the Contract Time for delays due to weather conditions may be made only when such conditions are more severe and extended than those reflected by the ten-year average for the month as evidenced by the Colorado Climate Data maintained by Colorado State University, Fort Collins, Colorado, or other data as mutually agreed between Owner and Contractor, for the project area. Extensions of time due to weather will be granted on the basis of one-and-four-tenths (1.4) calendar days added for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the Contract Time for weather conditions will occur only in the event that the weather in question impacted activities on the critical path of the Contractor's current Construction Schedule.

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. ~~Maker.~~ Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to ~~binding dispute resolution litigation.~~ Venue and jurisdiction for any suit brought to enforce the terms of this Agreement shall be in Pitkin County District Court, State of Colorado.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association Judicial Arbitrator Group, Denver, Colorado,~~ in accordance with ~~its~~ the Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of ~~binding dispute resolution litigation~~ proceedings but, in such event, mediation shall proceed in advance of ~~binding dispute resolution~~ proceedings, which shall be stayed pending mediation for a period of within 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ parties.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in ~~the place where the Project is located, unless another location is mutually agreed upon.~~ Agreements Aspen, Colorado. Written agreements, executed by the parties, reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

§ 15.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

§ 15.4.2 ~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 15.4.3 ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4 LITIGATION

§ 15.4.1 Litigation. This Contract, and all matters interpreting it and arising under it shall be enforced in, and all parties do now submit to, the exclusive jurisdiction and venue of the District Court, City and County of Pitkin, State of Colorado, in the event of any litigation concerning this Contract, and regardless of where this Contract may be executed. Each party consents to and agrees to file a general appearance in the event that it receives service of process.

§ 15.4.2 Jury Trial Waiver. To the fullest extent permitted by law, Owner and Contractor specifically waive any right to a trial by jury in any court with respect to any contractual, tortious or statutory claim, counterclaim or cross-claim against the other arising out of or connected in any way to the project or the Contract Documents. The complex commercial and professional aspects of the Contract make a jury determination neither desirable nor appropriate. Contractor shall include this provision in all of its subcontracts and purchase orders.

§ 15.4.3 Removal Waiver. To the fullest extent permitted by law, Owner and Contractor specifically waive any right to remove any action to United States District Court for the District of Colorado, regardless of the presence of diversity of citizenship among or between the parties. Contractor shall include this provision in all of its subcontracts and purchase orders.

§ 15.4.4 Attorneys Fees: In the event that either party brings legal action to enforce any provision of this Contract, the prevailing party shall be awarded all of its reasonable costs and expenses, including attorney's fees, incurred by such party in connection with such action.

ARTICLE 16 OWNER'S ADDITIONAL SPECIFIC CONCERNS

§ 16.1 Notwithstanding the above, the Owner has a unique set of stakeholders with which the Owner must cooperate and coordinate. The Contractor shall cooperate with the Owner and the Owner's stakeholders throughout the Project when requested by the Owner.

1. The Contractor shall participate once per month in a progress meeting with the Owner, including a walk-through of the site.

2. The Owner may request tours from time to time of the project and the site. The Contractor shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Construction Manager.

ARTICLE 17. Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101

§ 17.1 Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the Owner, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a Contractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

§ 17.2 Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the Owner.

.1 "E-verify program" means the electronic employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is jointly administered by the United States Department of Homeland Security and the social security Administration, or its successor program.

.2 "Department program" means the employment verification program established pursuant to Section 8-17.5-102(5)(c).

.3 "Public Contract for Services" means this Agreement.

.4 "Services" means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

§ 17.3 By signing this document, Contractor certifies and represents that at this time:

.1 Contractor shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services; and

.2 Contractor has participated or attempted to participate in either the e-verify program or the department program in order to verify that new employees are not illegal aliens.

§ 17.4 Contractor hereby confirms that:

.1 Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

.2 Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

.3 Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program.

.4 Contractor shall not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

.5 If Contractor obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with an illegal alien, Contractor shall:

.1 Notify such subcontractor and the Owner within three days that Contractor has actual knowledge that the subcontractor is employing or subcontracting with an illegal alien; and

.2 Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

.6 Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

.7 If Contractor violates any provision of the Public Contract for Services pertaining to the duties

imposed by Subsection 8-17.5-102, C.R.S. the Owner may terminate this Agreement. If this Agreement is so terminated, Contractor shall be liable for actual damages to the Owner arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rob Taylor, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:16:37 on 02/10/2016 under Order No. 6745749122_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Certification of Document's Authenticity
AIA® Document D401™ – 2003

B201 Show A.m. /

I, Rob Taylor, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:16:37 on 02/10/2016 under Order No. 6745749122_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report. ✓



(Signed)

ROB TAYLOR
SENIOR P.M.

(Title)

FEB 2, 2016

(Dated)



Document A132™ – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the 22nd day of February in the year 2016

BETWEEN the Owner:

The City of Aspen
130 South Galena St
Aspen, Colorado 81611

and the Contractor:

Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506

for the following Project:

City of Aspen Civic Space Relocation Project:
Police Station, 540 East Main St, Aspen Colorado and
Civic Offices, Rio Grande Place, Aspen, Colorado

The Construction Manager:

NV5, Inc.
2650 18th St, Suite 202
Denver, Colorado, 80211

The Architect:

Charles Cunniffe Architects
610 E. Hyman Avenue
Aspen, Colorado, 81611

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

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7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

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10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement,, as amended Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. If anything in the other Contract Documents, other than a modification is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Contractor is responsible for Preconstruction and Construction phase services. The Construction phase services shall be incorporated by an IGMP Amendment and an FGMP Amendment for each Phase – refer to Section 9.1.8.

§ 2.1 Project Phases:

The Project consists of two separate locations and Phases, as follows:

- Phase 1: Police Station at 540 Main Street, Aspen
- Phase 2: Civic Offices at Rio Grande Place, Aspen.

§ 2.2 Preconstruction Services: The Contractor agrees to provide preconstruction services as listed in this Article 2, using the Contractor’s skill and best professional judgment in cooperation with, and in reliance upon, the services of the Architect. The Contractor agrees to perform preconstruction services in an expeditious and economical manner consistent with the interests of the Project.

§ 2.2.1 The Contractor shall prepare five detailed construction cost estimates for each Phase, Phase 1 and Phase 2, based on the development of the design at:(1) Schematic Design, (2) 50% Design Development, (3) 100% Design Development, (4) 25% Construction Documents, and (5) 100% complete Construction Documents. The Contractor shall provide an Initial Guaranteed Maximum Price ("IGMP") package for each Phase based on 100% completed Design Development Documents, and a Final Guaranteed Maximum Price ("FGMP") package for each Phase based on 100% complete Construction Documents.

Init.

§ 2.2.2 At each stage of cost estimate, the Contractor shall advise the Owner and the Architect if it appears that the construction cost may exceed the most current approved budget, make recommendations for changes to achieve cost reductions, and work cooperatively with the Owner and Architect to implement such changes, through Value Engineering and alternative methods or systems.

§ 2.2.3 The Contractor shall provide construction cost evaluations of alternative materials, systems and processes.

§ 2.2.4 The Contractor shall review designs during their development for purposes of assessing constructability and impact on budgeting and schedule, including providing written recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and other factors related to construction costs and time of alternative designs or materials, and possible economies.

§ 2.2.5 The Contractor shall provide a construction schedule for the Construction Manager's, Architect's and the Owner's review and acceptance, and periodically update a schedule to coordinate and integrate, the Contractor's services, the Architect's services, permitting, and the Owner's responsibilities, within the anticipated construction schedule.

§ 2.2.6 The Contractor shall review Construction Documents at predetermined intervals as they are being prepared and recommend alternative solutions whenever design details affect construction feasibility, or the design is likely to exceed the most current approved budget or schedule.

§ 2.2.7 Advise on the method to be used for selecting Subcontractors and awarding Subcontracts. Review the drawings and specifications and make recommendations to help minimize scope and coordination disputes between the Subcontractor trades.

§ 2.2.8 Recommend purchase of materials and equipment requiring long lead time procurement. Purchase, expedite and coordinate delivery of these purchases upon receipt of executed Change Order.

§ 2.2.9 The Contractor shall make recommendations for the subcontract bidders list and develop Subcontract bidders' interest in the Project, establish bidding schedules, assist the Architect with the receipt of questions from Subcontractor bidders, and assist the Architect with the issuance of Addenda, if required.

§ 2.2.10 Assist the Owner, Construction Manager, and Architect, to obtain building permits, approvals, and special permits for the Project, upon request.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of preconstruction services shall be the date of execution of this agreement. The date of commencement of the construction phase Work shall be fixed in a notice to proceed issued by the Owner.
(Paragraphs deleted)

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 *The Contractor shall achieve Substantial Completion of the entire Work not later than*
(Paragraphs deleted)
the dates specified in the executed FGMP Amendments.

Portion of the Work

Police Station at 540 Main St
Civic Offices at Rio Grande Place

Substantial Completion Date

Target – To be determined, defined in the GMP Addendum
Target – To be determined, defined in the GMP Addendum

subject to adjustments of this Contract Time as provided in the Contract Documents.

§ 3.4 **LIQUIDATED DAMAGES** Should the contractor fail to substantially complete the Work on or before the date of Substantial Completion for each building set forth in the Contract Documents, as adjusted by Change Order, the Owner shall deduct from any monies due or which may become due to Contractor a sum as specified therein, for each

Init.

and every calendar day for each building that the Work shall remain uncompleted. The sum shall be considered not as a penalty but as a cost(s) of additional field and office expenses, additional consultants fees, rental costs and other expenses incurred by the Owner, caused by such delays.

§ 3.5 SCHEDULE OF LIQUIDATED DAMAGES Owner shall deduct from the Contractor Two Thousand Dollars (\$2,000.00) for each day after the Date of Substantial Completion until the Work is substantially complete, as that term is defined in A201, section 9.8. The parties acknowledge and agree that the daily amounts set forth above for liquidated damages are reasonable due to increased costs of administering the Contract, and increased consultants expenses incurred by the Owner due to delays in completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be the

(Paragraphs deleted)

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below.

(Paragraph deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.4.2 The Contractor's Fee:

(Paragraph deleted)

§ 4.4.2.1 The Contractor's Fee for Preconstruction Services:

The Contractors lump sum fee for Preconstruction services shall be a maximum of one hundred and eighty two thousand dollars, four hundred and sixteen dollars (\$182,416) which may reduce should the Police Station start in Spring 2017. This will be paid based on the milestone based fee schedule.

§ 4.4.2.2 The Contractor's Fee for Construction Services:

The Contractors Fee (Overhead and Profit) shall be five point four five percent (5.45%) of the Cost of the Work. This fee percentage shall not be applied to the Preconstruction services lump sum fee.

The Contract Sum, defined in the IGMP Addendum and FGMP Amendment for each Phase, will be based on the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee, subject to additions and deductions by Change Order as provided in the Contract Documents. The IGMP and FGMP Estimates will also include an amount for General Conditions which is subject to additions and deductions by Change Order as provided in the Contract Documents. General Conditions will be based on the Cost of the Work which will not exceed a separate Guaranteed Maximum Price amount (the "General Conditions GMP"). The Contractor must not move work, or funds from the subcontract trades, or self-performed work to General Conditions. In the absence of a Change Order, or Construction Change Directive that amends the General Conditions, the total cost for General Conditions shall not exceed the General Conditions GMP. The options for the General Conditions for each phase are attached in Exhibit G.

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

For additive and deductive changes, the Contractors fee shall be as per section 4.4.2.2

§ 4.4.4 Limitations on a Subcontractor's and Sub-Subcontractors overhead and profit for increases in the cost of its portion of the Work shall be governed by Article 7.1 of the A201-2007 General Conditions

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ninety percent (90 %) of the standard rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any: To be added by GMP Addendum, if required.

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed To be added by GMP Addendum - refer Section 9.1.8 (\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

The Guaranteed Maximum Price (GMP) shall be defined by the GMP Amendment executed by the Owner and Contractor for each Phase of the Project . An IGMP Amendment will be executed based on the 100% Design Development documents. The FGMP Amendment will be executed based on the 100% Construction Documents.

Provided that the Contractor's Guaranteed Maximum Price proposals are acceptable to the Owner, they will be added to this Agreement by Amendment. If such Guaranteed Maximum Price proposal is not acceptable to the Owner, the Owner, Construction Manager, Contractor and Architect shall cooperate in good faith to modify the scope of work to achieve a Guaranteed Maximum Price proposal that is acceptable. If a Guaranteed Maximum Price proposal cannot be mutually agreed to between the Owner and the Contractor, this Agreement may be terminated per Article 14 of the A201-2007 General Conditions.

The amount by which the sum of the (i) actual Cost of the Work, plus (ii) the Contractor's Fee, is less than the Guaranteed Maximum Price is referred to as the "Savings". All Savings shall be returned to the Owner at Final Payment.

§ 4.4.7.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

To be determined

§ 4.4.7.3 Allowances included in the Guaranteed Maximum Price, if any:
(Paragraph deleted)

Item	Allowance
To be determined	

§ 4.4.7.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

To be determined and included in the GMP Addendum

§ 4.5 If the extent of changes in the Work cause substantial inequity to the Owner, or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager and Architect by the Contractor, and upon certification of the Application for Payment and Certificate for Payment by the Architect and issuance by the Architect to the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that a notarized Application for Payment is received by the Construction Manager not later than the Fifth day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the Fifth day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Construction Manager receives the Application for Payment.

(Paragraphs deleted)

§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.10 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of five percent (5 %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Construction Manager or Architect have withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.6.5 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The Contractor shall not hold more than 5% retainage on Subcontracts and the Contractor shall execute subcontracts in accordance with this section 5.1.6.5.

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager or Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.6.7 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with a Guaranteed Maximum payment; and
- .3 The project is advertised pursuant to CRS section 38-26-106, and
- .4 a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document (Paragraphs deleted) A201-2007.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall (Paragraphs deleted) be Litigation in the Pitkin County District Court, State of Colorado.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Intentionally deleted

(Paragraphs deleted)

§ 7.2 Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 7.2.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

(Paragraphs deleted)

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2

(Paragraphs deleted)

Init.

Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of the decision or judgment, whichever is later. Aspen Municipal Code Section 4.16.070. Interest.

§ 8.3 The Owner's representative:

City of Aspen
 130 South Galena Street
 Aspen, Colorado
 Contact: Jack Wheeler, Capital Asset Manager
 Phone: (970) 429-1790
 Fax: (970) 544-5378
Jack.Wheeler@cityofaspen.com

§ 8.4 The Contractor's representative:

Shaw Construction LLC
 760 Horizon Drive, #201
 Grand Junction, CO 81506
 Contact: Steve H Meyer
 Phone: 970.242.9236

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.4 The Construction Manager's representative:

NVS, Inc.
 2650 18th Street, Suite 202
 Denver, Colorado 80211
 Contact: Rob Taylor – Senior Project Manager
 Phone: 720.217.6822

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition – as amended

§ 9.1.2 The General Conditions are, AIA Document A201-2007, General Conditions of the Contract for Construction – as amended.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Not required.			

§ 9.1.4 The Specifications:
 (Paragraph deleted)

See IGMP Amendments and FGMP Amendments for each Phase.

Section	Title	Date	Pages
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Init.

§ 9.1.5 The Drawings:

(Paragraphs deleted)

See IGMP Amendments and FGMP Amendments for each Phase.

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
See IGMP Amendments and FGMP Amendments for each Phase.		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents are:

1. AIA Document A132™-2009, Exhibit A, Determination of the Cost of the Work – as amended

(Paragraphs deleted)

2. Other documents, if any, listed below:
 - Exhibit B - The City of Aspen - Request for Proposal – Contract #2015-130
 - Exhibit B.1 - The City of Aspen - Request for Proposal – Clarifications/Addenda
 - Exhibit C - The Contractors RFQ proposal
 - Exhibit D – Target schedule
 - Exhibit E – Contractors Burdened Hourly Labor Rates and Contract Rates for Fees, Overhead, Insurance and Bonds.
 - Exhibit F – Contractors Equipment Rates
 - Exhibit G – Contractors Not to Exceed General Conditions options CONFIDENTIAL, NOT PUBLISHED, HELD ON FILE BY CITY OF ASPEN PROCUREMENT

§ 9.1.8 The Project includes two discrete Phases of work for (i) the Police Station at 540 Main St and (ii) City offices at Rio Grande Place/Galena Plaza. For each Phase the Contractor shall provide an IGMP Amendment package and an FGMP Amendment package including the following:

- a) The detailed GMP Estimate
- b) Basis of Estimate (clarifications)
- c) Schedule
- d) Phasing Schedule (as applicable)
- e) Drawing/Document List
- f) Rate Sheet, Unit Prices, Allowances
- g) Alternates List
- h) Special Conditions

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

Provide bonding requirements and limits of liability for insurance below required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Payment and Performance Bonds	Each in the full Contract amount.
Contractor Insurance:	
General Liability	\$2 million per occurrence \$3 million aggregate \$3 million completed operations

Automobile Liability

\$1 million covering owned, hired and non-owned automobiles

Excess Liability Umbrella

\$3 million per occurrence
(following form on employer's liability, general liability and automobile coverages and excess liability or umbrella limits may be combined with employer's liability, general liability and automobile coverages to meet the limits required in the Contract)

Pollution Liability Insurance

\$2 million per occurrence
\$3 million aggregate

Workers Compensation Employers Liability

Colorado statutory limits
\$1 million/ \$1 million/ \$1 million

Builders Risk Insurance

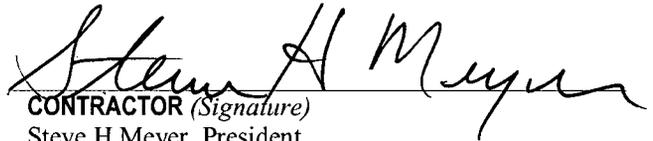
In the full Contract amount

This Agreement is entered into as of the day and year first written above.

CITY OF ASPEN



OWNER (Signature)
Steven Skadron, Mayor



CONTRACTOR (Signature)
Steve H Meyer, President

(Row deleted)

Additions and Deletions Report for AIA[®] Document A132[™] – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:24:42 on 02/10/2016.

PAGE 1

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.) 22nd day of February in the year 2016

BETWEEN the Owner:
(Name, legal status, address and other information)

The City of Aspen
130 South Galena St
Aspen, Colorado 81611

and the Contractor:
(Name, legal status, address and other information)

Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506

...
(Name, location and detailed description)
City of Aspen Civic Space Relocation Project:
Police Station, 540 East Main St, Aspen Colorado and
Civic Offices, Rio Grande Place, Aspen, Colorado

...
(Name, legal status, address and other information)
NV5, Inc.
2650 18th St, Suite 202
Denver, Colorado, 80211

...
(Name, legal status, address and other information)
Charles Cunniffe Architects
610 E Hyman Avenue
Aspen, Colorado, 81611

PAGE 2

EXHIBIT A — DETERMINATION OF THE COST OF THE WORK

The Contract Documents consist of this ~~Agreement, Agreement,~~ as amended Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. If anything in the other Contract Documents, other than a modification is inconsistent with this Agreement, this Agreement shall govern.

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Contractor is responsible for Preconstruction and Construction phase services. The Construction phase services shall be incorporated by an IGMP Amendment and an FGMP Amendment for each Phase – refer to Section 9.1.8.

§ 2.1 Project Phases:

The Project consists of two separate locations and Phases, as follows:

Phase 1: Police Station at 540 Main Street, Aspen

Phase 2: Civic Offices at Rio Grande Place, Aspen

§ 2.2 Preconstruction Services: The Contractor agrees to provide preconstruction services as listed in this Article 2, using the Contractor's skill and best professional judgment in cooperation with, and in reliance upon, the services of the Architect. The Contractor agrees to perform preconstruction services in an expeditious and economical manner consistent with the interests of the Project.

§ 2.2.1 The Contractor shall prepare five detailed construction cost estimates for each Phase, Phase 1 and Phase 2, based on the development of the design at: (1) Schematic Design, (2) 50% Design Development, (3) 100% Design Development, (4) 25% Construction Documents, and (5) 100% complete Construction Documents. The Contractor shall provide an Initial Guaranteed Maximum Price ("IGMP") package for each Phase based on 100% completed Design Development Documents, and a Final Guaranteed Maximum Price ("FGMP") package for each Phase based on 100% complete Construction Documents.

§ 2.2.2 At each stage of cost estimate, the Contractor shall advise the Owner and the Architect if it appears that the construction cost may exceed the most current approved budget, make recommendations for changes to achieve cost reductions, and work cooperatively with the Owner and Architect to implement such changes, through Value Engineering and alternative methods or systems.

§ 2.2.3 The Contractor shall provide construction cost evaluations of alternative materials, systems and processes.

§ 2.2.4 The Contractor shall review designs during their development for purposes of assessing constructability and impact on budgeting and schedule, including providing written recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and other factors related to construction costs and time of alternative designs or materials, and possible economies.

§ 2.2.5 The Contractor shall provide a construction schedule for the Construction Manager's, Architect's and the Owner's review and acceptance, and periodically update a schedule to coordinate and integrate, the Contractor's services, the Architect's services, permitting, and the Owner's responsibilities, within the anticipated construction schedule.

§ 2.2.6 The Contractor shall review Construction Documents at predetermined intervals as they are being prepared and recommend alternative solutions whenever design details affect construction feasibility, or the design is likely to exceed the most current approved budget or schedule.

§ 2.2.7 Advise on the method to be used for selecting Subcontractors and awarding Subcontracts. Review the drawings and specifications and make recommendations to help minimize scope and coordination disputes between the Subcontractor trades.

§ 2.2.8 Recommend purchase of materials and equipment requiring long lead time procurement. Purchase, expedite and coordinate delivery of these purchases upon receipt of executed Change Order.

§ 2.2.9 The Contractor shall make recommendations for the subcontract bidders list and develop Subcontract bidders' interest in the Project, establish bidding schedules, assist the Architect with the receipt of questions from Subcontractor bidders, and assist the Architect with the issuance of Addenda, if required.

§ 2.2.10 Assist the Owner, Construction Manager, and Architect, to obtain building permits, approvals, and special permits for the Project, upon request.

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to preconstruction services shall be the date of execution of this agreement. The date of commencement of the construction phase Work shall be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows:

PAGE 3

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than (—) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

the dates specified in the executed FGMP Amendments.

...
Police Station at 540 Main St
Civic Offices at Rio Grande Place

Target – To be determined, defined in the GMP Addendum
Target – To be determined, defined in the GMP Addendum

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

§ 3.4 LIQUIDATED DAMAGES Should the contractor fail to substantially complete the Work on or before the date of Substantial Completion for each building set forth in the Contract Documents, as adjusted by Change Order, the Owner shall deduct from any monies due or which may become due to Contractor a sum specified therein, for each and every calendar day for each building that the Work shall remain uncompleted. The sum shall be considered not as a penalty but as a cost(s) of additional field and office expenses, additional consultants fees, rental costs and other expenses incurred by the Owner, caused by such delays.

§ 3.5 SCHEDULE OF LIQUIDATED DAMAGES Owner shall deduct from the Contractor Two Thousand Dollars (\$2,000.00) for each day after the Date of Substantial Completion until the Work is substantially complete, as that term is defined in A201, section 9.8. The parties acknowledge and agree that the daily amounts set forth above for liquidated damages are reasonable due to increased costs of administering the Contract, and increased consultants expenses incurred by the Owner due to delays in completion.

PAGE 4

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- Stipulated Sum, in accordance with Section 4.2 below
- Cost of the Work plus the Contractor's Fee without a Guaranteed Maximum Price, in accordance with Section 4.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below. Based on the selection above, also complete either Section 5.1.4, 5.1.5 or 5.1.6 below.)

§ 4.2 Stipulated Sum

§ 4.2.1 The Stipulated Sum shall be (\$ _____), subject to additions and deletions as provided in the Contract Documents.

§ 4.2.2 The Stipulated Sum is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.2.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.2.4 Allowances included in the Stipulated Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
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§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price

§ 4.3.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.3.2 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:

~~§ 4.3.4~~ Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~§ 4.3.5~~ Rental rates for Contractor owned equipment shall not exceed _____ percent (____%) of the standard rate paid at the place of the Project.

~~§ 4.3.6~~ Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ 4.3.7~~ The Contractor shall prepare and submit to the Construction Manager for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the items in Section A.1 of Exhibit A, Determination of the Cost of the Work.

...
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

~~§ 4.4.2.1~~ The Contractor's Fee for Preconstruction Services:

The Contractor's lump sum fee for Preconstruction services shall be a maximum of one hundred and eighty two thousand dollars, four hundred and sixteen dollars (\$182,416) which may reduce should the Police Station start in Spring 2017. This will be paid based on the milestone based fee schedule.

~~§ 4.4.2.2~~ The Contractor's Fee for Construction Services:

The Contractor's Fee (Overhead and Profit) shall be five point four five percent (5.45%) of the Cost of the Work. This fee percentage shall not be applied to the Preconstruction services lump sum fee.

The Contract Sum, defined in the IGMP Addendum and FGMP Amendment for each Phase, will be based on the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee, subject to additions and deductions by Change Order as provided in the Contract Documents. The IGMP and FGMP Estimates will also include an amount for General Conditions which is subject to additions and deductions by Change Order as provided in the Contract Documents. General Conditions will be based on the Cost of the Work which will not exceed a separate Guaranteed Maximum Price amount (the "General Conditions GMP"). The Contractor must not move work, or funds from the subcontract trades, or self-performed work to General Conditions. In the absence of a Change Order, or Construction Change Directive that amends the General Conditions, the total cost for General Conditions shall not exceed the General Conditions GMP. The options for the General Conditions for each phase are attached in Exhibit G.

...
For additive and deductive changes, the Contractor's fee shall be as per section 4.4.2.2

~~§ 4.4.4~~ Limitations, if any, Limitations on a Subcontractor's and Sub-Subcontractors overhead and profit for increases in the cost of its portion of the Work: Work shall be governed by Article 7.1 of the A201-2007 General Conditions

PAGE 5

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed ninety percent (90 %) of the standard rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any: To be added by GMP Addendum, if required.
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

§ 4.4.7.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed To be added by GMP Addendum - refer Section 9.1.8 (\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.) The Guaranteed Maximum Price (GMP) shall be defined by the GMP Amendment executed by the Owner and Contractor for each Phase of the Project . An IGMP Amendment will be executed based on the 100% Design Development documents. The FGMP Amendment will be executed based on the 100% Construction Documents.

Provided that the Contractor's Guaranteed Maximum Price proposals are acceptable to the Owner, they will be added to this Agreement by Amendment. If such Guaranteed Maximum Price proposal is not acceptable to the Owner, the Owner, Construction Manager, Contractor and Architect shall cooperate in good faith to modify the scope of work to achieve a Guaranteed Maximum Price proposal that is acceptable. If a Guaranteed Maximum Price proposal cannot be mutually agreed to between the Owner and the Contractor, this Agreement may be terminated per Article 14 of the A201-2007 General Conditions.

The amount by which the sum of the (i) actual Cost of the Work, plus (ii) the Contractor's Fee, is less than the Guaranteed Maximum Price is referred to as the "Savings". All Savings shall be returned to the Owner at Final Payment.

...

To be determined

...

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

...

To be determined

...

To be determined and included in the GMP Addendum

§ 4.5 If the extent of changes in the Work cause substantial inequity to the Owner, or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work and the Guaranteed Maximum Price shall be adjusted accordingly.

...

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager and Architect by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance by the Architect,

Architect to the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

§ 5.1.3 Provided that ~~an~~ a notarized Application for Payment is received by the Construction Manager not later than the Fifth day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the Fifth day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Construction Manager receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

~~§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum~~

~~§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.~~

~~§ 5.1.4.3 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of — percent (—%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;~~
- ~~.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of — percent (—%);~~
- ~~.3 Subtract the aggregate of previous payments made by the Owner; and~~
- ~~.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.~~

~~§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 shall be further modified under the following circumstances:~~

- ~~.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to percent (—%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and~~
- ~~.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.~~

~~§ 5.1.4.5 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.4.3.1 and 5.1.4.3.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)~~

~~§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit A, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take the Cost of the Work as described in Exhibit A, Determination of the Cost of the Work;~~
- ~~.2 Add the Contractor's Fee, less retainage of — percent (—%). The Contractor's Fee shall be computed upon the Cost of the Work described in that Section at the rate stated in that Section; or if the Contractor's Fee is stated as a fixed sum, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract retainage of — percent (—%) from that portion of the Work that the Contractor self-performs;~~
- ~~.4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Article 5 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or withdrawn a Certificate for Payment as provided in Section 9.5 of AIA Document A232™ 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.~~

~~§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

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- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.10 of AIA Document A232-2009; A201-2007;

- ...
- .3 Add the Contractor's Fee, less retainage of five percent (5 %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Contractor self-performs;
 - .7 Subtract amounts, if any, for which the Construction Manager or Architect have withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A232-2009~~ A201-2007.

~~§ 5.1.6.5~~ The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) ~~the percentage of retainage held on Subcontracts, Subcontractors.~~ The Contractor shall not hold more than 5% retainage on Subcontracts and the Contractor shall execute subcontracts in accordance with those agreements. this section 5.1.6.5.

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- .1 ~~the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2009, A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;~~
- .2 ~~the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and~~
- .3 ~~a final Certificate for Payment or Project Certificate for Payment~~ The project is advertised pursuant to CRS section 38-26-106, and
- .4 ~~a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:~~

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A232-2009~~, ~~unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~ (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

A201-2007.

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document ~~A232-2009, A201-2007~~, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document ~~A232-2009~~.

Litigation in a court of competent jurisdiction.

Other: (Specify)

be Litigation in the Pitkin County District Court, State of Colorado.

~~§ 7.1 Where the Contract Sum is a Stipulated Sum Intentionally deleted~~

~~§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232-2009.~~

~~§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232-2009.~~

~~§ 7.2~~

~~Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~
~~Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price~~

~~§ 7.2.1 Subject to the provisions of Section 7.2.2 below, the The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232-2009. A201-2007.~~

~~§ 7.2.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A232-2009; however, the Owner shall then only pay the Contractor an amount calculated as follows:~~

- ~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Sections 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~
- ~~.3 Subtract the aggregate of previous payments made by the Owner.~~

~~§ 7.2.3 If the Owner terminates the Contract for cause when the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, and as provided in Article 14 of AIA Document A232-2009, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A232-2009 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.2.~~

~~§ 7.2.4 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.~~

~~§ 7.2.5 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232-2009; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232-2009, except that the term 'profit' shall be understood to mean the Contractor's Fee as described in Sections 4.3.2 and 4.4.2 of this Agreement.~~

~~§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232-2009 A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.~~

~~§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

(Insert rate of interest agreed upon, if any.)

 % Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of the decision or judgment, whichever is later. Aspen Municipal Code Section 4.16.070. Interest.

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~~(Name, address and other information)~~

~~City of Aspen
130 South Galena Street
Aspen, Colorado
Contact: Jack Wheeler, Capital Asset Manager
Phone: (970) 429-1790
Fax: (970) 544-5378~~

~~(Name, address and other information)~~

~~Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506
Contact: Steve H Meyer
Phone: 970.242.9236~~

§ 8.4 The Construction Manager's representative:

~~NV5, Inc.
2650 18th Street, Suite 202
Denver, Colorado 80211
Contact: Rob Taylor, Senior Project Manager
Phone: 720.217.6822~~

§ 9.1.1 The Agreement is this executed AIA Document A132-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition: Edition – as amended

§ 9.1.2 The General Conditions are are, AIA Document A232-2009, A201-2007, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition: Construction – as amended.

Not required.

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See IGMP Amendments and FGMP Amendments for each Phase.

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(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See IGMP Amendments and FGMP Amendments for each Phase.

Payment and Performance Bonds

Each in the full Contract amount.

Contractor Insurance:
General Liability

\$2 million per occurrence
\$3 million aggregate
\$3 million completed operations

Automobile Liability

\$1 million covering owned, hired and non-owned automobiles

Excess Liability Umbrella

\$3 million per occurrence
(following form on employer's liability, general liability and automobile coverages and excess liability or umbrella limits may be combined with employer's liability, general liability and automobile coverages to meet the limits required in the Contract)

Pollution Liability Insurance

\$2 million per occurrence
\$3 million aggregate

Workers Compensation Employers Liability

Colorado statutory limits
\$1 million/ \$1 million/ \$1 million

Builders Risk Insurance

In the full Contract amount

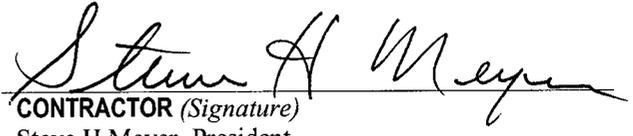
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CITY OF ASPEN



OWNER (Signature)
Steven Skadron, Mayor

(Printed name and title)



CONTRACTOR (Signature)
Steve H Meyer, President

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rob Taylor, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:24:42 on 02/10/2016 under Order No. 6745749122_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Certification of Document's Authenticity
AIA® Document D401™ – 2003

A132 Shaw Final ✓

I, Rob Taylor, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:24:42 on 02/10/2016 under Order No. 6745749122_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)



ROB TAYLOR
SENIOR P.M.

(Title)

Feb 2, 2016

(Dated)



City of Aspen Civic Space Relocation Project

Schedule E – Contractor Burdened Hourly Labor Rates & Contract Rates for Fees,
Overhead, Insurance Shaw Construction Rates

DESCRIPTION	RATE
^ ▶ ▼ Project Superintendent	\$78.65/hr
▲* ^ ▶ ▼ Assistant Superintendent	\$71.95/hr
▲* ^ ▶ ▼ Project Engineer	\$40.78/hr
▲* ^ ▶ ▼ Project Manager	\$54.76/hr
▲* ▼▲* Construction Manager	\$72.01/hr
▼▶* Director of Pre-Construction	\$70.12/hr
▼▶* Senior Estimator	\$49.52/hr
* Safety Supervisor	\$78.65/hr
▼* Project Coordinator	\$24.24/hr
▼▲* CPM Scheduler	\$67.00/hr
+* General Laborer	\$23.18/hr
+* Labor Foreman (exclusive of subsistence)	\$22.00/hr
+* Carpenter Foreman (exclusive of subsistence)	\$26.40/hr
+* Carpenters (exclusive of subsistence)	\$22.50/hr
Project Vehicles	\$7.15/hr
Copier & Fax (excludes supplies)	\$305/month/each
Cell Phones / Tablets	\$0.56/hr
IT Services (Computer, network, software)(excluding maintenance & supplies)	\$3.00/hr
* Computer IT Support	\$33.17/hr
Cloud Technology Services	.10% of GMP
Insurance (Liability, Umbrella, Auto, Professional & Pollution)	0.925% of GMP
Builders Risk Insurance	\$1,500/month
Subsistence	Actual Cost as Required
P&P Bond	.615% of GMP
Warranty Reserve	0.40% of GMP for 1 year 0.60% of GMP for 2 year
Labor Burden, FICA, FUTA, SUTA	20% of labor
OH/Fee for Construction	5.45%

NOTES

Labor Burden apply to all positions with *

Hourly Employees overtime rate = 1.5 x base rate, applies to all positions shown with +

All rates are agreed upon in advance by Construction Manager and Owner, and while hours and usage are subject to audit, rates and percentages on this Exhibit are not subject to audit.

Subsistence applies to all positions shown with ^

Labor rates are subject to 3% increase on January 1, of each year.

SMW

Project vehicles applies to all positions shown with ▶

Cell Phones / Tablets phones apply to all positions shown with ▲

IT Services (Computer, network, software) apply to all positions shown with ▼

The labor burden, subsistence, project vehicles, cell phones/tablets, and IT Services (computer, network, software) are added on top of the staff rates as noted in exhibit. So an example of the project superintendent would be \$78.65/hour + 20% labor burden which would make up the burden rate of \$94.38/hour. There would then be the hourly charge for the project vehicle, cell phone/tablets, and IT (computer, network, software) services per the exhibit schedule for the project superintendent in this example.



Determination of the Cost of the Work

for the following Project:

City of Aspen Civic Space Relocation Project
540 East Main St (Police Station) and
Rio Grande Place (Civic office)

THE OWNER:

The City of Aspen
130 South Galena St
Aspen, Colorado 81611

THE CONTRACTOR:

Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506

THE CONSTRUCTION MANAGER:

NV5, Inc.
2650 18th St, Suite 202
Denver, Colorado, 80211

THE ARCHITECT:

Charles Cunniffe Architects
610 E. Hyman Avenue
Aspen, Colorado, 81611

ARTICLE A.1 CONTROL ESTIMATE

§ A.1.1 Where the Contract Sum is based on the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 4.1 of the Agreement, the Contractor shall prepare and submit to the Construction Manager, for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect Changes in the Work.

§ A.1.2 The Control Estimate shall include

- .1 the documents enumerated in Article 1 of the Agreement, including all Addenda thereto and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under A.1.4, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232[™]-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132[™]-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232[™]-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

- .4 schedules indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment that must be ordered well in advance of construction, and the Owner's occupancy requirements showing portions of the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section A.1.4.

§ A.1.3 The Contractor shall meet with the Owner and Construction Manager to review the Control Estimate. In the event that the Owner or Construction Manager discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ A.1.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ A.1.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Construction Manager with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, through the Construction Manager, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

ARTICLE A.2 COSTS TO BE REIMBURSED

§ A.2.1 Cost of the Work

§ A.2.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior audit and consent of the Owner. The Owner and Contractor agree that the labor and equipment rates set forth in Exhibit E and Exhibit F shall be subject to a pre-audit by the Owner, after which the rates shall not be subject to further audit or adjustment. The Cost of the Work shall include only the items set forth in this Article A.2.

§ A.2.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Agreement.

§ A.2.2 Labor Costs

§ A.2.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Overtime for non-exempt employees may be charged at 1.5 times the base Hourly Rates.

§ A.2.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(Paragraph deleted)

Person Included	Status (Full-time/Part-time)	Rate (\$0.00)	Rate (Unit of Time)
<Refer Exhibit E>	<Refer Exhibit E>	<Refer Exhibit E>	<Refer Exhibit E>

§ A.2.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.2.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.2.2.

§ A.2.2.5 Contractor's project personnel stationed at the Contractor's principal office or offices other than the site office, will not be charged to this Project without the Owner's prior written approval. With the Owner's prior approval, such personnel will be paid based on actual hours devoted to the Project at the rates to be listed in the approved Burdened Hourly Rates schedule in Exhibit E. With the Owner's prior approval, reasonable travel and temporary living expenses are allowed for such employees. Salaried, exempt employees of Contractor will not be paid an overtime premium, and will not charge the Project for more than 40 hours in any week. Wages or salaries of officers of the company, Project Executives, Construction Executives, Senior Project Executives or above will not be reimbursed under any circumstances. The Owner accepts that some staff such as Admin, Accounting and Project Manager may be based off-site and this will be confirmed in the final GMP addendum.

§ A.2.3 Subcontract Costs

Payments made by the Contractor to any Subcontractors in accordance with the requirements of the subcontracts on the Project will be considered a Cost of the Work and the Contractor will be entitled to no more than the fee in Section 4.4.2.2 on Subcontract costs.

§ A.2.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.2.4.2 Costs of materials described in the preceding Section A.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.2.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.2.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ A.2.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.2.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.2.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ A.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.2.6 Miscellaneous Costs

§ A.2.6.1 Premiums for that portion of Contractor's insurance and bonds required by the Contract Documents that can be directly attributed to this Contract shall be reimbursed at the rates established in Exhibit E.

§ A.2.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable and which are not exempt under the City's Tax Exemption.

§ A.2.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ A.2.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by A201-2007, General Conditions of the Contract for Construction, or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.2.7.3.

§ A.2.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents, and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ A.2.6.6 Costs for electronic equipment, cell phones computers and software, office furniture and office equipment directly related to the Work with the Owner's prior approval. The total rental costs of any rental item, excluding the cost of insurance, repairs and maintenance, whether a Contractor owned item, or otherwise, may not exceed the purchase price of any comparable item. Items purchased for the Project as a direct cost charged to the Project belong to the Owner.

§ A.2.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ A.2.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, and other than those related to claims filed by subcontractors or material suppliers for non-payment on the project, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.2.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the performance of the Work on this project at the rates defined and agreed Exhibit E. Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like will not be reimbursed under and circumstances.

§ A.2.6.10 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.2.6.11 General Conditions will be paid monthly, on the basis of the Cost of the Work as defined in A132-2009 Exhibit A, Determination of the Cost of the Work, to a maximum of the General Conditions GMP.

§ A.2.7 Other Costs and Emergencies

§ A.2.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.2.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.2.7.3 Costs of repairing or correcting damaged Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged Work was not caused by negligence, failure to conform to the Contract documents, or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ A.2.8 Related Party Transactions

§ A.2.8.1 For purposes of Section A.2.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ A.2.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner and the Construction Manager of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.5. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article A.5.

§ A.2.9 Contingency

§ A.2.9.1 The Contractor's GMP may include up to 2% of the GMP as a Contractor's Contingency for the Contractor's exclusive use to cover costs defined in Article 7 which are properly considered reimbursable as a Cost of the Work but do not form the basis for a Change Order or an increase in the GMP in accordance with the Contract Documents, or as a result of changes in the scope of the Work. No Fee is added to the Contractor's Contingency at the time the GMP is prepared.

§ A.2.9.2 The Contractor shall report and reconcile the Contractor's Contingency to the Owner on a monthly basis. If the Contractor wishes to use the Contractor's Contingency during the Project, the Contractor Contingency will be allocated to specific line items in the Estimate through the use of a Change Order signed by the Owner and Contractor, including a description of the items covered by the Contractor's Contingency. The Contractor's Fee on the contingency amount will be added to the Change Order at the time the contingency is allocated to individual line items. The allocation of the contingency will not increase the GMP, however the Contractor's Fee on the contingency amount will increase the GMP.

§ A.2.9.3 The Owner shall not unreasonably withhold approval of a Change Order to utilize the Contractor's Contingency provided (a) the contingency amount requested does not exceed the GMP and (b) the Contractor utilizes the Contractor's Contingency for items required for the Project that are otherwise recoverable as Costs of the Work under the Contract Documents but do not form the basis for a Change Order, for example:

1. Scope of the Work that is unclear, incomplete or conflicting on the Contract Documents but which is Work consistent with the Contract Documents and reasonably inferable as being necessary to produce the intended results; or
2. Additional resources necessary to recover lost time for non-excused delays. If overtime is required to maintain the schedule, the Contractor shall obtain the Owner's prior written approval before moving forward with such overtime; or
3. Additional costs to expedite the schedule for non-excusable delays caused by market, labor, material or transportation conditions, labor disputes, normal adverse weather or other causes which are costs of the Work but do not justify an increase in the GMP; or
4. Additional costs necessary to complete the Work included in the Contract Documents due to a subcontractor default, replacement of a subcontractor, or other costs to supplement completion of the Work, or
5. Other unanticipated costs which do not form the basis for an increase in the GMP. Mis-scope and scope buy-out gaps are an acceptable use of this contingency.

§ A.2.9.4 The Contractor's Contingency is not available for use by the Contractor for mistakes that result from Self-Performed Work, mistakes of subcontractors or vendors, subcontractor's warranty work, or manufacturer's warranty work.

§ A.2.9.5 The Contractor's Contingency is not available for use by the Owner for allowance overruns, changes in the Scope of Work, differing or changed site conditions, or design errors.

§ A.2.9.6 At Final Completion of the Project, any Contractor's Contingency remaining in the Final GMP will be returned 100% to the Owner.

ARTICLE A.3 COSTS NOT TO BE REIMBURSED

§ A.3.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, officers of the company, Project Executives, Construction Executives and the like, except as specifically provided in Section A.2.2.2;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article A.2;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section A.2.7.3 of this Agreement, costs to correct defective, non-conforming work, or work damaged due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article A.2; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Entertainment, business development meals, meals delivered to the job site, or similar expenses.
- .9 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the contractor, or paid to any Subcontractor or vendor without the Owners prior approval.
- .10 Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like

ARTICLE A.4 DISCOUNTS, REBATES AND REFUNDS

§ A.4.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.4.2 Amounts that accrue to the Owner in accordance with Section A.4.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE A.5 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own forces, defined as the Contractor's own personnel or employees, shall be performed under subcontracts or purchase agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Construction Manager and Architect. The Owner shall then determine, with the advice of the Contractor, Construction Manager, and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.5.2 When a the Contractor has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Contractor, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted after the GMP has been established, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.3 Subcontracts, purchase orders or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without a guaranteed maximum price or lump sum price. If a subcontract or purchase order is awarded on the basis of cost-plus a fee with a guaranteed maximum price, the Contractor shall provide in the subcontract or purchase order for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.6, below.

ARTICLE A.6 ACCOUNTING RECORDS

§ A.6.1 The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Construction Manager. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, on at least a monthly basis, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ A.6.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors through the Construction Manager, a final accounting of the Cost of the Work.

§ A.6.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Construction Manager by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section A.6.2 have been met, the Construction Manager and Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Construction Manager and Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section A.6.3 supersede those stated in Section 9.4.1 of AIA Document A201-2007. The Construction Manager and Architect are not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.6.4 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Initial Decision Maker. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Construction Manager and Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

§ A.6.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.2, Costs to be Reimbursed, and not excluded by Article A.3, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor. The Owner shall not be required to reimburse the Contractor to correct defective or non-conforming Work of Subcontractors or Sub-subcontractors, or damage to the Work which is covered under any policies of insurance.

Additions and Deletions Report for AIA® Document A132™ – 2009 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:12:39 on 02/10/2016.

PAGE 1

(Name, location and brief description)
City of Aspen Civic Space Relocation Project
540 East Main St (Police Station) and
Rio Grande Place (Civic office)

THE OWNER:
(Name, legal status, address and other information)

The City of Aspen
130 South Galena St
Aspen, Colorado 81611

...

(Name, legal status, address and other information)
Shaw Construction LLC
760 Horizon Drive, #201
Grand Junction, CO 81506

...

(Name, legal status, address and other information)
NV5, Inc.
2650 18th St, Suite 202
Denver, Colorado, 80211

...

(Name, legal status, address and other information)
Charles Cunniffe Architects
610 E. Hyman Avenue
Aspen, Colorado, 81611

PAGE 2

§ A.2.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior audit and consent of the Owner. The Owner and Contractor agree that the labor and equipment rates set forth in Exhibit E and Exhibit F shall be subject to a pre-audit by the Owner, after which the rates shall not be subject to further audit or adjustment. The Cost of the Work shall include only the items set forth in this Article A.2.

...

§ A.2.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Overtime for non-exempt employees may be charged at 1.5 times the base Hourly Rates.

...

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

...

<Refer Exhibit E>

<Refer Exhibit E>

<Refer Exhibit E>

<Refer Exhibit E>

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§ A.2.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval. Contractor's project personnel stationed at the Contractor's principal office or offices other than the site office, will not be charged to this Project without the Owner's prior written approval. With the Owner's prior approval, such personnel will be paid based on actual hours devoted to the Project at the rates to be listed in the approved Burdened Hourly Rates schedule in Exhibit E. With the Owner's prior approval, reasonable travel and temporary living expenses are allowed for such employees. Salaried, exempt employees of Contractor will not be paid an overtime premium, and will not charge the Project for more than 40 hours in any week. Wages or salaries of officers of the company, Project Executives, Construction Executives, Senior Project Executives or above will not be reimbursed under any circumstances. The Owner accepts that some staff such as Admin, Accounting and Project Manager may be based off-site and this will be confirmed in the final GMP addendum.

...

Payments made by the Contractor to any Subcontractors in accordance with the requirements of their subcontracts, the subcontracts on the Project will be considered a Cost of the Work and the Contractor will be entitled to no more than the fee in Section 4.4.2.2 on Subcontract costs.

...

§ A.2.6.1 Premiums for that portion of Contractor's insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contract shall be reimbursed at the rates established in Exhibit E.

§ A.2.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable and which are not exempt under the City's Tax Exemption.

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§ A.2.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by A232™-2009, A201-2007, General Conditions of the Contract for Construction, current as of the date of this Agreement and Exhibit or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.2.7.3.

...

§ ~~A.2.6.6~~ ~~Costs for electronic equipment and software, equipment, cell phones computers and software, office furniture and office equipment directly related to the Work with the Owner's prior approval. The total rental costs of any rental item, excluding the cost of insurance, repairs and maintenance, whether a Contractor owned item, or otherwise, may not exceed the purchase price of any comparable item. Items purchased for the Project as a direct cost charged to the Project belong to the Owner.~~

§ ~~A.2.6.8~~ Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, ~~and other than those related to claims filed by subcontractors or material suppliers for non-payment on the project,~~ reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ ~~A.2.6.9~~ Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work performance of the Work on this project at the rates defined and agreed Exhibit E. ~~Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like will not be reimbursed under and circumstances.~~

§ ~~A.2.6.11~~ General Conditions will be paid monthly, on the basis of the Cost of the Work as defined in A132-2009 Exhibit A, ~~Determination of the Cost of the Work,~~ to a maximum of the General Conditions GMP.

§ ~~A.2.7.3~~ Costs of repairing or correcting damaged or ~~nonconforming~~ Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or ~~nonconforming~~ Work was not caused by ~~negligence~~ negligence, ~~failure to conform to the Contract documents,~~ or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

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§ ~~A.2.9~~ Contingency

§ ~~A.2.9.1~~ The Contractor's GMP may include up to 2% of the GMP as a Contractor's Contingency for the Contractor's exclusive use to cover costs defined in Article 7 which are properly considered reimbursable as a Cost of the Work but do not form the basis for a Change Order or an increase in the GMP in accordance with the Contract Documents, or as a result of changes in the scope of the Work. No Fee is added to the Contractor's Contingency at the time the GMP is prepared.

§ ~~A.2.9.2~~ The Contractor shall report and reconcile the Contractor's Contingency to the Owner on a monthly basis. ~~If the Contractor wishes to use the Contractor's Contingency during the Project, the Contractor Contingency will be allocated to specific line items in the Estimate through the use of a Change Order signed by the Owner and Contractor, including a description of the items covered by the Contractor's Contingency. The Contractor's Fee on the contingency amount will be added to the Change Order at the time the contingency is allocated to individual line items. The allocation of the contingency will not increase the GMP, however the Contractor's Fee on the contingency amount will increase the GMP.~~

§ ~~A.2.9.3~~ The Owner shall not unreasonably withhold approval of a Change Order to utilize the Contractor's Contingency provided (a) the contingency amount requested does not exceed the GMP and (b) the Contractor utilizes the Contractor's Contingency for items required for the Project that are otherwise recoverable as Costs of the Work under the Contract Documents but do not form the basis for a Change Order, for example:

.1 Scope of the Work that is unclear, incomplete or conflicting on the Contract Documents but which is Work consistent with the Contract Documents and reasonably inferable as being necessary to produce the intended results; or

.2 Additional resources necessary to recover lost time for non-excused delays. If overtime is required to maintain the schedule, the Contractor shall obtain the Owner's prior written approval before moving forward with such overtime; or

.3 Additional costs to expedite the schedule for non-excusable delays caused by market, labor, material or transportation conditions, labor disputes, normal adverse weather or other causes which are costs of the Work but do not justify an increase in the GMP; or

.4 Additional costs necessary to complete the Work included in the Contract Documents due to a subcontractor default, replacement of a subcontractor, or other costs to supplement completion of the Work, or

.5 Other unanticipated costs which do not form the basis for an increase in the GMP. Mis-scope and scope buy-out gaps are an acceptable use of this contingency.

§ A.2.9.4 The Contractor's Contingency is not available for use by the Contractor for mistakes that result from Self-Performed Work, mistakes of subcontractors or vendors, subcontractor's warranty work, or manufacturer's warranty work.

§ A.2.9.5 The Contractor's Contingency is not available for use by the Owner for allowance overruns, changes in the Scope of Work, differing or changed site conditions, or design errors.

§ A.2.9.6 At Final Completion of the Project, any Contractor's Contingency remaining in the Final GMP will be returned 100% to the Owner.

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.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, officers of the company, Project Executives, Construction Executives and the like, except as specifically provided in Section A2.2.2;

.5 Except as provided in Section A.2.7.3 of this Agreement, costs to correct defective, non-conforming work, or work damaged due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

.8 Entertainment, business development meals, meals delivered to the job site, or similar expenses.

.9 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the contractor or paid to any Subcontractor or vendor without the Owners prior approval.

.10 Travel expenses and accommodation of officers of the company, Project Executives, Construction Executives and the like

§ A.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own forces, defined as the Contractor's own personnel or employees, shall be performed under subcontracts or by other

~~appropriate purchase~~ agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Construction Manager and Architect. The Owner shall then determine, with the advice of the Contractor, Construction Manager, and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.5.2 When a the Contractor has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Contractor, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be ~~accepted~~, accepted after the GMP has been established, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.3 ~~Subcontracts~~ Subcontracts, purchase orders or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without ~~the prior consent of the Owner~~. ~~If the subcontract is awarded on a cost plus a fee basis, a guaranteed maximum price or lump sum price.~~ If a subcontract or purchase order is awarded on the basis of cost-plus a fee with a guaranteed maximum price, the Contractor shall provide in the subcontract or purchase order for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.6, below.

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§ A.6.1 The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Construction Manager. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, on at least a monthly basis, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ A.6.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Construction Manager by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section A.6.2 have been met, the Construction Manager and Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Construction Manager and Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document ~~A232-2009~~, A201-2007. The time periods stated in this Section A.6.3 supersede those stated in Section 9.4.1 of AIA Document ~~A232-2009~~, A201-2007. The Construction Manager and Architect are not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.6.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.2, Costs to be Reimbursed, and not excluded by Article A.3, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor. The Owner shall not be required to reimburse the Contractor to correct

defective or non-confirming Work of Subcontractors or Sub-subcontractors, or damage to the Work which is covered under any policies of insurance.





MEMORANDUM

TO: Mayor and City Council

FROM: Karen Harrington, Director of Quality
Rebecca Wallace, Operations Manager, Community Development

THROUGH: Jessica Garrow, Community Development Director
Alissa Farrell, Interim Asst. City Mngr. / Human Resources Director

MEETING DATE: May 13, 2019

RE: Authorization to Spend Remaining Building Permits System Project Funds

REQUEST OF COUNCIL: Staff seeks approval to spend remaining budgeted project funds, in the amount of \$27,284, for the Salesforce permits, land use planning, licensing, and code enforcement system.

PREVIOUS COUNCIL ACTION: Since 2017, staff have been working with a team of vendors to design, build, test, and deploy a customer-centric, streamlined system for managing permits, land use planning cases, licenses, and code violations. The system is built on the Salesforce platform and incorporates a Salesforce app, Basicgov. On March 27, 2017, Council approved a contract with a Salesforce Partner, Vertiba (now owned by Publicis Sapient), for professional services in the amount of \$462,860 (Contract project number 50259-001). On the same date, Council approved a contract with BasicGov, in the amount of \$85,173.90 for 1) Salesforce and BasicGov licensing and 2) BasicGov annual support. The total initial contract cost for the system was \$548,033.90.

Since then, Council has periodically approved amendments for additional expenditures for ongoing support from Publicis Sapient, who took the overall lead in designing and configuring the system. The contract has been amended incrementally as staff have continued to assess the value of, and the need for, their support. On September 24, 2018, Council approved an annual On-Demand contract with Publicis Sapient for continuing professional services. The initial amount was \$9,880.00, with additional on-demand funding up to a maximum of \$24,500. Amendment 1 was approved by Community Development on December 4, 2018, increasing the maximum total to \$45,000. Amendment 2 was approved by Council on March 11, 2019, increasing the total for annual Publicis Sapient assistance to \$70,000. All amendments have been made utilizing existing funding.

BACKGROUND:

System Development
Publicis Sapient and BasicGov began work on the project in late May 2017. The choice of this vendor team was made after extensive cross-functional internal reviews and evaluations of proposals.

Permission to start came after an external review of the recommended proposal. A team coordinated by the International Code Council (ICC) Global Services group headed this independent external review of the staff recommendation. The ICC team affirmed the decision of the City's internal team.

Engagement in the project has been robust and collaborative. City staff and managers have been involved with 1) the definition of processes, 2) development of the RFP (including identification of system requirements), 3) the evaluation of proposers, and/or 4) system design, build, testing, evaluation, and use. The internal team has included representatives from: APCHA, Community Development, Engineering, Environmental Health, Finance, GIS, Information Technology, Parks, Parking, Quality Office, Transportation, and Utilities. In addition, the Fire District and the Sanitation District have been involved. The Quality Office has managed the project day-to-day; provides internal and external user training and support; and provides system administration services.

When the initial "draft" customer portal was developed, staff sought input from a group of external customers. Substantial revisions to appearance and functionality were incorporated as a result. Staff continue to improve the portal by incorporating feedback from customer learning sessions and assistance contacts.

Current Functionalities for Staff

Currently, 77 staff are set up as users of the system. Broadly, their roles in the system include: system administrator, administrative assistant, permit coordinator, permit reviewer, and permit inspector. The benefits the system provides to users include:

- ✓ A central location and transparency for addresses, permits, licenses, certifications, contacts, and accounts
- ✓ The ability to perform work from any location
- ✓ Automated, more consistent routing for reviews and inspections, based on department-specified needs
- ✓ Automated emails and document generation
- ✓ The ability to attach emails to any record, or to "chatter" and automatically generate an email to any contact in the system, internal or external
- ✓ Additional email and document templates to use on a discretionary or as-needed basis
- ✓ The ability to conduct inspections in the field using an app
- ✓ The ability to view permits on a map
- ✓ The ability to generate a multitude of reports and dashboards to assist with management
- ✓ Access to the data needed to understand process performance and bottlenecks
- ✓ The ability to handle all necessary financial transactions and track bonds
- ✓ The ability to put into place automated email alerts and reporting
- ✓ The ability to easily check for necessary contractor licenses and certifications

The new system integrates with several other City systems so that existing capabilities are leveraged and information exchange happens where appropriate. Through direct integrations or configured files, the following other city systems interact with the Salesforce/BasicGov system:

- ✓ Bluebeam
- ✓ GIS

✓ Innoprise

✓ Oracle

Current Functionalities for Applicants

The number of external users registered in the system is now nearing 800 people. Applicants for permits, contractor licenses, and professional certifications in the development trades can now submit their applications 24/7 from any location, via an online customer portal. They also also pay fees online. Importantly, they can view the details of their applications (such as the status of reviews or inspections) easily, without the need to call staff.

Thus far, more than 800 permits have been opened in the system. At this time, the following permit types can be applied for online or in-person:

- ✓ Tent
- ✓ Fence
- ✓ Sign
- ✓ Standalone Electrical
- ✓ Standalone Plumbing
- ✓ Standalone Mechanical
- ✓ Temporary Encroachment
- ✓ Permanent Encroachment
- ✓ Right of Way
- ✓ Standalone Fire
- ✓ Landscape/Grade
- ✓ Tree
- ✓ Parking (construction)

Three beta tests of building permits also are live in the system.

In addition to applying for permits, the new system integrates applications for professional certifications and contractor licenses. Like permits, these can now be handled online by the applicants. In addition, City business licenses are imported on a scheduled basis. Every professional certification type (15) and every license type (35) are currently available through the system.

System Support

Currently, a robust system of support is available for staff and applications. These include dedicated help hours from the Quality Office Business Analyst, lunch and learn opportunities, and other ongoing individual and small group training/support sessions. In addition, the Analyst provides same day email and phone support; and develops and distributes written and video training materials. A specific web page for training and support exists on the City's web site as well. It provides a mix of written materials and videos and can be found at: <https://www.cityofaspen.com/1211/Salesforce-Applicant-Portal-Support>

Planned Functionalities

By the end of June, staff anticipate going live with the remaining permit types, which include:

- ✓ Building
- ✓ Building – demolition
- ✓ Building - interior finish or fixture removal
- ✓ Building – repair
- ✓ Building – change order
- ✓ Building – phased
- ✓ Building - roofing
- ✓ Mechanical, electrical and plumbing sub-permits
- ✓ Pitkin County Permit
- ✓ Smuggler Mountain Superfund

✓ Temporary Structure

✓ Utility Water Connection

At about the same time, a public portal will open. Via the public portal, any resident or visitor will be able to see or search for permit locations. Finally, later in the summer and into the fall, the land use planning functionality of the system will go live. Full deployment of all functionality is anticipated during Fall 2019.

DISCUSSION

Staff included contingency funding in the project budget. However, staff did not seek approval to spend the contingency funding when the original project contracts were approved. Budgeted funding in the amount of \$27,284 remains in the project budget. At this time, staff requests that the budgeted contingency funds be released for use toward ongoing support and enhancement costs.

RECOMMENDATIONS: Approve the expenditure of the remaining Salesforce/BasicGov permits, planning, licensing, and code enforcement budgeted project funding.

FINANCIAL/BUDGET IMPACTS: The funding is already budgeted with the Community Development Department budget (General Fund). No new funds are being requested.

ENVIRONMENTAL IMPACTS: The system provides electronic end-to-end processing of permits, planning cases, code enforcement, licensing, and certifications, reducing paper use by applicants and staff. It also will decrease greenhouse gas emissions directly because applicants will be able to apply from their homes or offices instead of driving to City offices.

ALTERNATIVES: Council could forego approving the expenditure of the remaining project funds, though this would make full deployment of the system difficult.

PROPOSED MOTION: That the Council approve the expenditure of the remaining project funds for the Salesforce/BasicGov permits, land use planning, licensing, and code enforcement software project.

CITY MANAGER COMMENTS:

RESOLUTION #056

(SERIES OF 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING EXPENDITURE OF REMAINING BUDGETED PROJECT FUNDS FOR THE SALESFORCE/BASICGOV PERMITS, LAND USE, LICENSING AND CODE ENFORCEMENT SYSTEM

WHEREAS, the City of Aspen has previously entered into a contract with Publicis Sapien and BasicGov licenses and services to build and deploy a permits, land use, licensing and code enforcement system; and

WHEREAS, the project budget included contingency funds not yet approved for expenditure by Council; and

WHEREAS, staff is seeking approval to spend the remaining project funds for the purpose of continuing support and system enhancements.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO

That the City Council of the City of Aspen hereby approves the expenditure of the remaining budgeted project contingency funds for the Salesforce/Basicgov permits, land use, licensing and code enforcement system and does hereby authorize the City Manager to allow the expenditure of the funds on behalf of the City of Aspen, subject to the approval of the City Manager and the City Attorney.

INTRODUCED, READ, AND ADOPTED by the City Council of the City of Aspen on the 13th day of May 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk, do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado at a meeting held, May 13, 2019.

Linda Manning, City Clerk

MEMORANDUM

TO: Mayor and City Council

FROM: Ryan Dew, Turf Specialist
Matt Kuhn, Parks Operations Manager

THRU: Austin Weiss, Parks and Open Space Director

DATE OF MEMO: May 13th, 2019

MEETING DATE: May 13th, 2019

RE: Resolution #048 (2019) -Wagner Park Turf Restoration

REQUEST OF COUNCIL: The Parks Department is requesting approval of a contract with Graff's Turf for the supply and installation of turf to quickly restore Wagner Park following the Food and Wine Classic in June.

PREVIOUS COUNCIL ACTION: The Wagner Park Restoration Project is included in the 2019 budget as a Capital Project. City Council approved this capital project through the 2018 Budget process.

Council also approved a similar contract in 2017 and 2018 for the restoration of Wagner Park following the 2017 and 2018 Food and Wine Classic.

DISCUSSION: In 2016, 2017 and 2018, the parks department has honed an improved process for the renovation of Wagner Park following the heavy impacts to turf caused by the Food and Wine Classic. In 2017, the parks department expanded the renovation of Wagner park to include the majority of the field. By expanding the area and reducing the patchwork sod replacement, staff were able to cultivate a high-quality field in time for the 4th of July, and throughout the remainder of the summer season.

The process of removing the damaged turf and preparing the field is performed by City of Aspen Parks maintenance and construction crews. Graff's Turf provides both the sod and the installation as part of the supply contract.

The removed sod is hauled to the Burlingame park construction site, where the material is salvaged for compost and topsoil. Construction and restoration crews began using the salvaged

material from 2016 as topsoil in the 2017 and 2018 construction season, and report good quality and success from the material

In 2019, staff plan to renovate the same area of turf that was completed in 2018. This allows for a more uniform field following the restoration, as well as reducing issues associated with watering. In partnership with the City of Aspen, the Food and Wine event will contribute an additional \$40,000 towards the purchase of the sod and installation, which is in addition to this contract amount with the City of Aspen.

FINANCIAL/BUDGET IMPACTS: The contract with Graff’s Turf, in the amount of \$57,750, is within the budget for this project. The Capital project is 100.572.81200.57410.50962, and the project is budgeted for \$79,000. The funds remaining provide contingency, and are used for other materials such as sand and site prep.

ENVIRONMENTAL IMPACTS: Through this restoration process, parks staff will be able to more efficiently water-in the new sod, and the reuse of the old sod provides material and topsoil for various parks projects.

RECOMMENDED ACTION: Parks Staff recommends approval of the contract with Graff’s Turf for the Wagner Park Restoration.

ALTERNATIVES: City Council could direct staff to re-negotiate the terms of the contract, or the extent of the restoration.

PROPOSED MOTION: “I move to approve Resolution # 048, series of 2019, on the Consent Calendar of Monday, May 13th 2019.

CITY MANAGER COMMENTS: _____

ATTACHMENTS:

A – Contract with Graff’s Turf

9809 N. FRONTAGE RD. I-76 | PO BOX 715 | FORT MORGAN, CO 80701-0715
 970.867.8873 • info@graффsturf.com

ADDRESS
CITY OF ASPEN PARKS DEPT 130 SOUTH GALENA ASPEN, CO 81611 JUNE 24-JUNE 28TH

SHIP TO
WAGNER PARK 350 S MONARCH STREET ASPEN, CO

QUOTE #	DATE
2226	02/28/2019

SHIP DATE 06/24/2019	SHIP VIA GRAFF'S	SALES REP TL	PO NUMBER WAGNER PARK-HYPER BLUE
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ACTIVITY	QTY	RATE	AMOUNT
GTF:SOD:Hyper Blue Hyper Blue (Split Big Rolls)	80,000	0.36	28,800.00T
GTF:GTF MISC:Thick Cut 1 Thick Cut Harvest at 1"	80,000	0.20	16,000.00T
GTF:DELIVERY:Delivery - Flatbed Delivery Charge - Flatbed	21	1,550.00	32,550.00
GTF:INSTALL & SERVICES:Installation - Thick Cut Installation - Thick Cut	80,000	0.22	17,600.00
GTF:GTF MISC:Miscellaneous GTF Representative on-site (Sales Rep - Trent)	80,000	0.03	2,400.00
GTF:RESALE ITEMS:Fertilizer Fertilizer (20-20-10-3)	10	40.00	400.00T
GTF:RESALE ITEMS:Tube Charge Tube Charge	500	0.00	0.00T
GTF:GTF MISC:Miscellaneous Miscellaneous Item - Payment by Food & Wine	-1	40,000.00	-40,000.00

Due to the time frame of this project. There is a possibility of hot sod.
 Graff's will be responsible for replacing hot sod and for the disposal of the turf.

SUBTOTAL	57,750.00
TAX	0.00
TOTAL	\$57,750.00

Accepted By

Accepted Date

RESOLUTION #048
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND GRAFF’S TURF AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract for the renovation of Wagner Park following Food and Wine, between the City of Aspen and Graff’s Turf, a true and accurate copy of which is attached hereto as Exhibit “A”;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

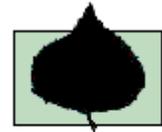
That the City Council of the City of Aspen hereby approves the Contract for Wagner Park renovation, between the City of Aspen and Graff’s Turf, a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 13th day of May 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, May 13, 2019.

Linda Manning, City Clerk



The City of Aspen
City Attorney's Office

CITY OF ASPEN STANDARD FORM OF AGREEMENT - V₂₀₁₀

SUPPLY PROCUREMENT AND PROFESSIONAL SERVICES

City of Aspen Project No.: 2019-50962.

AGREEMENT made as of 13th day of **May**, in the year **2019**.

BETWEEN the City:

The City of Aspen
c/o Parks Department
130 South Galena Street
Aspen, Colorado 81611
Phone: (970) 920-5055

Contract Amount:

Total: \$57,750.00

And the Professional:

Graff's Turf
c/o Angela Lundgate
9809 N. Frontage Road
PO Box 715
Fort Morgan, CO 80701
Phone: 800-280-8873

If this Agreement requires the City to pay an amount of money in excess of \$25,000.00 it shall not be deemed valid until it has been approved by the City Council of the City of Aspen.

City Council Approval:

Date: May 13, 2019

Resolution No.: 48, 2019

For the Following Project:

Turf Grass Sod and Installation for Wagner Park

Exhibits appended and made a part of this Agreement:

Exhibit A: List of supplies, equipment, materials or services to be purchased.

The City and Professional agree as set forth below.

SUPPLY PROCUREMENT

1. Purchase. Professional agrees to sell and City agrees to purchase the supplies, equipment, or materials, and services as described in **Exhibit A**, appended hereto and by this reference incorporated herein, for the sum of set forth above.
2. Delivery. FOB Wagner Park, 350 S. Monarch Street, Aspen, Colorado 81611.
3. Contract Documents. This Agreement shall include all Contract Documents as the same are listed in the Invitation to Bid or Request for Proposals and said Contract Document are hereby made a part of this Agreement as if fully set out at length herein.
4. Warranties. Graff's will be responsible for replacing hot sod and for the disposal of the turf.
5. Successors and Assigns. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the Professional respectively and their agents, representatives, employee, successors, assigns and legal representatives. Neither the City nor the Professional shall have the right to assign, transfer or sublet its interest or obligations hereunder without the written consent of the other party.

PROFESSIONAL SERVICES

6. Scope of Work. Professional shall perform in a competent and professional manner the delivery and installation of 80,000 square feet of thick cut bluegrass on Wagner Park in Aspen Colorado. The professional shall be responsible for the timely delivery of the sod, as well as the installation of the sod by the Professional or sub-contractors of the Professional.
7. Completion. Professional shall commence Work on July 4, 2019, and complete all phases of the Scope of Work as expeditiously as is consistent with professional skill and care and the orderly progress of the Work in a timely manner. The parties anticipate that all Work pursuant to this Agreement shall be completed no later than July 4, 2019.
8. Payment. In consideration of the work performed, City shall pay Professional a fixed sum as set forth in **Exhibit A** appended hereto. Except as otherwise mutually agreed to by the parties the payments made to Professional shall not initially exceed the amount set forth above. Professional shall submit, in timely fashion, invoices for work performed. The City shall review such invoices and, if they are considered incorrect or untimely, the City shall review the matter with Professional within ten days from receipt of the Professional's bill.
9. Non-Assignability. Both parties recognize that this Agreement is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other. Sub-Contracting, if authorized, shall not relieve the Professional of any of the responsibilities or obligations under this Agreement. Professional shall be and remain solely responsible to the City for the acts, errors, omissions or neglect of any subcontractors' officers, agents and employees, each of whom shall, for this purpose be deemed to be an agent or employee of the Professional to the extent of the subcontract. The City shall not be obligated to pay or be liable for payment of any sums due which may be due to any sub-contractor.

10. Termination of Procurement. The sale contemplated by this Agreement may be canceled by the City prior to acceptance by the City whenever for any reason and in its sole discretion the City shall determine that such cancellation is in its best interests and convenience.

11. Termination of Professional Services. The Professional or the City may terminate the Professional Services component of this Agreement, without specifying the reason therefor, by giving notice, in writing, addressed to the other party, specifying the effective date of the termination. No fees shall be earned after the effective date of the termination. Upon any termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material prepared by the Professional pursuant to this Agreement shall become the property of the City. Notwithstanding the above, Professional shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Professional, and the City may withhold any payments to the Professional for the purposes of set-off until such time as the exact amount of damages due the City from the Professional may be determined.

12. Independent Contractor Status. It is expressly acknowledged and understood by the parties that nothing contained in this agreement shall result in, or be construed as establishing an employment relationship. Professional shall be, and shall perform as, an independent Contractor who agrees to use his or her best efforts to provide the said services on behalf of the City. No agent, employee, or servant of Professional shall be, or shall be deemed to be, the employee, agent or servant of the City. City is interested only in the results obtained under this contract. The manner and means of conducting the work are under the sole control of Professional. None of the benefits provided by City to its employees including, but not limited to, workers' compensation insurance and unemployment insurance, are available from City to the employees, agents or servants of Professional. Professional shall be solely and entirely responsible for its acts and for the acts of Professional's agents, employees, servants and subcontractors during the performance of this contract. Professional shall indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax law, with respect to Professional and/or Professional's employees engaged in the performance of the services agreed to herein.

13. Indemnification. Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent and for an amount represented by the degree or percentage such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the wrongful act, omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

14. Professional's Insurance.

(a) Professional agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Professional shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 8 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

(b) Professional shall procure and maintain, and shall cause any subcontractor of the Professional to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurance acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Professional pursuant to Section 8 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) *Workers' Compensation* insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and *Employers' Liability* insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this paragraph.

(ii) *Commercial General Liability* insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

(iii) *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate with respect to each Professional's owned, hired and non-owned vehicles assigned to or used in performance of the Scope of Work. The policy shall contain a severability of interests provision. If the Professional has no owned automobiles, the requirements of this Section shall be met by each employee of the Professional providing services to the City under this contract.

(iv) *Professional Liability* insurance with the minimum limits of ONE MILLION DOLLARS (\$1,000,000) each claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

(c) The policy or policies required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers or employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Professional. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Professional shall be solely responsible for any deductible losses under any policy required above.

(d) The certificate of insurance provided by the City shall be completed by the Professional's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(e) Failure on the part of the Professional to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which City may immediately terminate this contract, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by Professional to City upon demand, or City may offset the cost of the premiums against monies due to Professional from City.

(f) City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(g) The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$150,000.00 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

15. City's Insurance. The parties hereto understand that the City is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Risk Management Department and are available to Professional for inspection during normal business hours. City makes no representations whatsoever with respect to specific coverages offered by CIRSA. City shall provide Professional reasonable notice of any changes in its membership or participation in CIRSA.

16. Completeness of Agreement. It is expressly agreed that this agreement contains the entire undertaking of the parties relevant to the subject matter thereof and there are no verbal or written representations, agreements, warranties or promises pertaining to the project matter thereof not expressly incorporated in this writing.

17. Notice. Any written notices as called for herein may be hand delivered or mailed by certified mail return receipt requested to the respective persons and/or addresses listed above.

18. Non-Discrimination. No discrimination because of race, color, creed, sex, marital status, affectional or sexual orientation, family responsibility, national origin, ancestry, handicap, or religion shall be made in the employment of persons to perform services under this contract. Professional agrees to meet all of the requirements of City's municipal code, Section 13-98, pertaining to non-discrimination in employment.

19. Waiver. The waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Professional to which the same may apply and, until complete performance by Professional of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

20. Execution of Agreement by City. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained herein, this Agreement shall not be binding upon the City unless duly executed by the Mayor of the City of Aspen (or a duly authorized official in his absence) following a Motion or Resolution of the Council of the City of Aspen authorizing the Mayor (or a duly authorized official in his absence) to execute the same.

21. Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.

(a) Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the City of Aspen, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a subcontractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

(b) Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

“Basic Pilot Program” means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

“Public Contract for Services” means this Agreement.

“Services” means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

- (c) By signing this document, Professional certifies and represents that at this time:
 - (i) Professional shall confirm the employment eligibility of all employees who are newly hired for employment in the United States; and
 - (ii) Professional has participated or attempted to participate in the Basic Pilot Program in order to verify that new employees are not employ illegal aliens.
- (d) Professional hereby confirms that:
 - (i) Professional shall not knowingly employ or contract new employees without confirming the employment eligibility of all such employees hired for employment in the United States under the Public Contract for Services.
 - (ii) Professional shall not enter into a contract with a subcontractor that fails to confirm to the Professional that the subcontractor shall not knowingly hire new employees without confirming their employment eligibility for employment in the United States under the Public Contract for Services.
 - (iii) Professional has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Professional does not employ any new employees who are not eligible for employment in the United States; and if Professional has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Professional shall forthwith apply to participate in the Federal Basic Pilot Program and shall in writing verify such application within five (5) days of the date of the Public Contract. Professional shall continue to apply to participate in the Federal Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Professional is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.
 - (iv) Professional shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.
 - (v) If Professional obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with a new employee who is an illegal alien, Professional shall:
 - (1) Notify such subcontractor and the City of Aspen within three days that Professional has actual knowledge that the subcontractor has newly employed or contracted with an illegal alien; and
 - (2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the new employee who is an illegal alien; except that Professional shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor

provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Professional violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City of Aspen may terminate the Public Contract for Services. If the Public Contract for Services is so terminated, Contractor shall be liable for actual and consequential damages to the City of Aspen arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

(ix) If Professional operates as a sole proprietor, Professional hereby swears or affirms under penalty of perjury that the Professional (1) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (2) shall comply with the provisions of CRS 24-76.5-101 *et seq.*, and (3) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

22. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflicts of Interest.

(a) Professional warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Professional for the purpose of securing business.

(b) Professional agrees not to give any employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to this Agreement, or to any solicitation or proposal therefore.

(c) Professional represents that no official, officer, employee or representative of the City during the term of this Agreement has or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof, except those that may have been disclosed at the time City Council approved the execution of this Agreement.

(d) In addition to other remedies it may have for breach of the prohibitions against contingent fees, gratuities, kickbacks and conflict of interest, the City shall have the right to:

1. Cancel this Purchase Agreement without any liability by the City;
2. Debar or suspend the offending parties from being a Professional, contractor or subcontractor under City contracts;
3. Deduct from the contract price or consideration, or otherwise recover, the value of anything transferred or received by the Professional; and
4. Recover such value from the offending parties.

23. Fund Availability. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement contemplates the City utilizing state or federal funds to meet its obligations herein, this Agreement shall be contingent upon the availability of those funds for payment pursuant to the terms of this Agreement.

22. General Terms.

(a) It is agreed that neither this Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified, changed, terminated or amended, waived, superseded or extended except by appropriate written instrument fully executed by the parties.

(b) If any of the provisions of this Agreement shall be held invalid, illegal or unenforceable it shall not affect or impair the validity, legality or enforceability of any other provision.

(c) The parties acknowledge and understand that there are no conditions or limitations to this understanding except those as contained herein at the time of the execution hereof and that after execution no alteration, change or modification shall be made except upon a writing signed by the parties.

(d) This Agreement shall be governed by the laws of the State of Colorado as from time to time in effect.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies each of which shall be deemed an original on the date first written above.

CITY OF ASPEN, COLORADO:

PROFESSIONAL:

[Signature]

[Signature]

By: _____
[Name]

By: _____
[Name]

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

City Attorney's Office

IN WITNESS WHEREOF, The City and the Vendor, respectively have caused this Agreement to be duly executed the day and year first herein written in three (3) copies, all of which, to all intents and purposes, shall be considered as the original.

FOR THE CITY OF ASPEN:

Attest:

By: _____
Sara Ott, Interim City Manager

Linda Manning, City Clerk

Date

SUPPLIER:

Gragg's Turf

By: Mark R. P.

PRESIDENT
Title

5/3/2019
Date

EXHIBIT A & B

Graff's Turf will provide and install premium Kentucky Bluegrass on the Wagner Park on or before **June 27, 2017**. Services include rolls of sod, delivery, installation, and fertilizer.

ACTIVITY	QTY	RATE	AMOUNT
GTF:SOD:Hyper Blue Hyper Blue (Split Big Rolls)	80,000	0.36	28,800.00T
GTF:GTF MISC:Thick Cut 1 Thick Cut Harvest at 1"	80,000	0.20	16,000.00T
GTF:DELIVERY:Delivery - Flatbed Delivery Charge - Flatbed	21	1,550.00	32,550.00
GTF:INSTALL & SERVICES:Installation - Thick Cut Installation - Thick Cut	80,000	0.22	17,600.00
GTF:GTF MISC:Miscellaneous GTF Representative on-site (Sales Rep - Trent)	80,000	0.03	2,400.00
GTF:RESALE ITEMS:Fertilizer Fertilizer (20-20-10-3)	10	40.00	400.00T
GTF:RESALE ITEMS:Tube Charge Tube Charge	500	0.00	0.00T
GTF:GTF MISC:Miscellaneous Miscellaneous Item - Payment by Food & Wine	-1	40,000.00	-40,000.00

TOTAL \$57,750.00

Due to the time frame of this project. There is a possibility of hot sod. Graff's will be responsible for replacing hot sod and for the disposal of the turf.



MEMORANDUM

TO: Mayor and City Council

FROM: Kyle Kline, Water Distribution Superintendent
Ryan Loebach, Sr. Project Manager

THROUGH: Tyler Christoff, Deputy Director of Utilities
Dave Hornbacher, Director of Utilities

MEETING DATE: May 13th, 2019

RE: On-Call Services Contract with Excavation Services, LLC

REQUEST OF COUNCIL: Staff requests Council approval of an on-call excavation services contract. Staff recommends awarding this contract to Excavation Services, LLC.

BACKGROUND: The operation of the City’s water distribution system requires periodic maintenance and replacement of buried infrastructure to reliably deliver potable water to our customer base.

The Environmental Protection Agency (EPA) states: “repair of water mains are extremely common activities that occur on a regular basis in all water systems. The relative frequency and nature of these activities represent a potential contamination risk to water distribution systems if proper procedures and existing standards are not followed.” During water main failures trained and licensed City staff require additional resources to complete a timely repair. Additional expertise and equipment associated with utility excavation, roadway repair, stormwater management and traffic control is a critical addition to City crews. A quick, skillfully executed repair by staff and an on-call contractor minimizes both the potential for contamination and the impact to the public.

The City proposes utilizing contract services to reduce risk, augment staff, and provide the most efficient and timely settlement of water leak repairs as possible. This type of resolution ensures the highest level of service to our customers and community.

The City currently utilizes two on-call excavation services contracts to provide flexibility and redundancy in procuring these services at any given time. Currently, Stutsman and Gerbaz Earthmoving, Inc., is the other on-call excavation service contract holder.

DISCUSSION: The City of Aspen advertised and solicited proposals through a competitive bid process. Two bids for on-call excavation services were received. Unit costs received from Excavation Services, as shown in the attached contract, were lower than their competitors.

In addition to a unit cost evaluation, City staff evaluated the performance of Excavation Services in previous work and contracts. In making this evaluation, key project staffing, training, specialty work

experience, customer service, and general on-call responsiveness were used to assess and recommend this vendor.

Excavation Services LLC has experience in various City of Aspen, and other municipal, utility infrastructure projects. Past performance associated with these projects has proven Excavation Services LLC. to be a conscientious and consummate professional. Staff recommends that it is in the City’s best interests to award the contract to this vendor.

FINANCIAL/BUDGET IMPACTS: Staff intends to use these contract services as needed. Individual leak repair cost vary depending on size, scope, and season among other factors. Staff have budgeted the following funding:

Projected Expenditures

Anticipated 2019 Leak Repairs	\$75,000.00
<u>Contingency</u>	<u>\$ 5,000.00</u>
TOTAL EXPENDITURES	\$80,000.00

Funding Budgeted

<u>2019 Water Line Maintenance Operating Fund</u>	
<u>(Acct #421.322.32310.52199)</u>	<u>\$80,000.00</u>
TOTAL FUNDING	\$80,000.00

Staff may request additional funding or utilize existing budget authority to cover additional water line leak repair costs over and above budget amounts shown above.

RECOMMENDED ACTION: Staff requests Council approval of an on-call excavation services contract. Staff recommends awarding this contract to Excavation Services, LLC.

PROPOSED MOTION: I move to approve Resolution #055 of 2019.

CITY MANAGER COMMENTS: _____

ATTACHMENTS:

- Attachment A – On-Call Services Contract – City of Aspen and Excavation Services, LLC
- Attachment B – Resolution #055, Excavation Services, LLC

RESOLUTION # 055
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING CONTRACT BETWEEN THE CITY OF ASPEN, AND EXCAVATION SERVICES AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract for On-Call Excavation Services, between the City of Aspen and Excavation Services, Inc a true and accurate copy of which is attached hereto as Exhibit "A";

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves that Contract for On-Call Excavation Services, between the City of Aspen and Excavation Services, LLC, copies of which are annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said agreements on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 13th day of May 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, May 13th, 2019.

Linda Manning, City Clerk

SERVICE AGREEMENT

THIS AGREEMENT made this 13th day of May 2019, by and between the City of Aspen ("City") and the Contractor identified herein below.

WITNESSETH, that whereas the City wishes to purchase the services described herein below and Contractor wishes to provide said services to the City as specified herein.

NOW THEREFORE, in consideration of the following covenants, the parties agree as follows:

CONTRACTOR

Excavation Services
Troy Buster
PO Box 1159
Carbondale, CO 81623
970-963-8355

DESCRIPTION OF SERVICE

Excavation Services shall respond calls for service from the City of Aspen Water/Utilities department and other City departments on an as-needed and emergency basis. Services needed for each call may vary. Bonds may be required depending on the project.

On occasion Excavation Services will be required to operate City owned equipment. In such event, Excavation Services warrants and agrees that it will provide a qualified operator for such equipment. Further, Excavation services acknowledges and agrees that the indemnification set forth in paragraph 9, of the General Conditions, attached hereto as Exhibit "A" shall extend and apply to the use of the City's equipment and acknowledges and agrees that Excavation Services will be responsible for any damage to the City's equipment caused by the negligence or willful misconduct of the employee of Excavation Services.

The City does not guarantee a minimum dollar value of the contract.

DURATION OF AGREEMENT AND SCHEDULE OF SERVICES TO BE PROVIDED

This agreement shall be for a period of time beginning May 13, 2019 through May 13, 2020 with two (2) one-year options to renew.

DESCRIPTION OF AMOUNT, METHOD OR MANNER OF COMPENSATION

The City will pay Excavation Services an hourly rate based on the rates provided for specific services listed on Exhibit B. Time and machine rates will not change. Materials such as gravel, asphalt, and dump fees will be charged at the current market rate.

All invoices shall show a detailed breakout of all expenditures.

Excavation Services and the City may negotiate new rates upon each contract renewal period. Material fees will remain at current market rate.

The maximum value of the contract is \$300,000.00 per contract year.

AMENDMENTS TO GENERAL CONDITIONS

Must obtain or possess a valid City of Aspen business license and must meet the City's minimum insurance requirements.

In addition to Workman's Compensation, Excavation Services must also have *Commercial General Liability* insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate and *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate with respect to each Professional's owned, hired and non-owned vehicles assigned to or used in performance of the Scope of Work.

The parties acknowledge and understand that this Service Agreement is, except as specifically amended hereinabove, subject to all of the terms and conditions set forth in the City of Aspen General Conditions for Service Agreements, a copy of which is appended hereto as Appendix "A" and by this reference made a part hereof.

Having agreed to the above and foregoing, the parties hereto do affix their signatures.

City of Aspen:

Contractor: Excavation Services

By: _____

By: _____

Title: _____

Title: President

Date: _____

Date: 4/24/2019

EXHIBIT "A"

CITY OF ASPEN GENERAL CONDITIONS FOR SERVICE AGREEMENTS

These General Conditions have been prepared by the City of Aspen to be incorporated by reference into Service Agreements entered into between service providers ("Contractor") and the City of Aspen ("City"). The provisions herein may be interrelated with standard provisions of the Service Agreement customarily used by the City of Aspen to contract for services. A change in one document may necessitate a change in the other.

Any amendments to the following terms and conditions mutually agreed to by the Contractor and the City shall be specifically noted on the Service Agreement.

1. Completion. Contractor shall commence the provision of services as described in the Service Agreement in a timely manner. Upon request of the City, Contractor shall submit, for the City's approval, a schedule for the performance of Contractor's services which shall be adjusted as required. This schedule, when approved by the City, shall not, except for reasonable cause, be altered by the Contractor.

2. Payment. In consideration of the services provided, City shall pay Contractor the amounts set forth in the Service Agreement. Contractor shall submit, in timely fashion, invoices for services performed. The City shall review such invoices and, if they are considered incorrect or untimely, the City shall review the matter with Contractor within ten days from receipt of the Contractor's billing. Contractor's invoice shall be for the period ending the last day of each month and submitted to the City no later than the 5th day of each month.

3. Non-Assignability. Both parties recognize that this Service Agreement is one for personal services and cannot be transferred, assigned, or sublet by either party without prior written consent of the other. Sub-Contracting, if authorized, shall not relieve the Contractor of any of the responsibilities or obligations under this Service Agreement. Contractor shall be and remain solely responsible to the City for the acts, errors, omissions or neglect of any subcontractor's officers, agents and employees, each of whom shall, for this purpose be deemed to be an agent or employee of the Contractor to the extent of the subcontract. The City shall not be obligated to pay or be liable for payment of any sums due which may be due to any subcontractor unless agreed to in writing beforehand by the City.

4. Termination. The Contractor or the City may terminate this Service Agreement upon thirty (30) days notice, without specifying the reason therefor, by giving notice, in writing, addressed to the other party, specifying the effective date of the termination.

The City shall have the right to terminate the Service Agreement upon three (3) days notice if Contractor fails to comply with the terms and conditions set forth in Sections 1, 3, 5, 6, 7, 10, 13, 14, 16, 19 or 21. For breach of any other term and condition of the Service Agreement, City may

terminate the Service Agreement with ten (10) days prior notice to cure and failure by Contractor to so cure.

No compensation shall be earned after the effective date of the termination. Notwithstanding the above, Contractor shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor may be determined.

5. Covenant Against Contingent Fees. The Contractor warrants that s/he has not been employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Service Agreement, that s/he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Service Agreement.

6. Equipment, Materials and Supplies. Unless otherwise agreed to by the City, Contractor shall acquire, provide, maintain, and repair at Contractor's expense such equipment, materials, supplies, etc., as necessary for the proper conduct of the services to be provided in accordance with the Service Agreement.

7. Contract Monitoring. Contractor agrees to allow City to reasonably monitor the services to be provided in accordance with the Service Agreement.

8. Independent Contractor Status. It is expressly acknowledged and understood by the parties that nothing contained in this Service Agreement shall result in, or be construed as establishing an employment relationship. Contractor shall be, and shall perform as, an independent contractor who agrees to use his or her best efforts to provide the said services on behalf of the City. No agent, employee, or servant of Contractor shall be, or shall be deemed to be, the employee, agent or servant of the City. City is interested only in the results obtained under this Service Agreement. The manner and means of conducting the work are under the sole control of Contractor. None of the benefits provided by City to its employees including, but not limited to, workers' compensation insurance and unemployment insurance, are available from City to the employees, agents or servants of Contractor. Contractor shall be solely and entirely responsible for its acts and for the acts of Contractor's agents, employees, servants and subcontractors during the performance of this Service Agreement. Contractor shall indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax law, with respect to Contractor and/or Contractor's employees engaged in the performance of the services agreed to herein.

9. Indemnification. Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent and for an amount represented by the degree or percentage such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the wrongful act,

omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

10. Contractor's Insurance. (a) Contractor agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 9 above. Such insurance shall be in addition to any other insurance requirements imposed by the Service Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 9 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

(b) Contractor shall procure and maintain Workmen's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under the Service Agreement, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.

(c) If the Service Agreement requires any insurance in addition to that referenced above at subsections (a) and (b), or a particular type of coverage, Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages referenced in the Service Agreement. All insurance coverages shall be procured and maintained with forms and insurance acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 9 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(d) The policy or policies required above shall be endorsed to include the City and the City's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers or employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policies required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

(e) The certificate of insurance provided by the City shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify the Service Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(f) Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Service Agreement upon which City may terminate the Service Agreement as provided by Section 4 above, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by Contractor to City upon demand, or City may offset the cost of the premiums against monies due to Contractor from City.

(g) City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(h) The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this Service Agreement, the monetary limitations (presently \$150,000.00 per person and \$600,000 per occurrence) or any other rights, immunities, and protection provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as from time to time amended, or otherwise available to City, its officers, or its employees.

11. City's Insurance. The parties hereto understand that the City is a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) and as such participates in the CIRSA Property/Casualty Pool. Copies of the CIRSA policies and manual are kept at the City of Aspen Finance Department and are available to Contractor for inspection during normal business hours. City makes no representations whatsoever with respect to specific coverages offered by CIRSA. City shall provide Contractor reasonable notice of any changes in its membership or participation in CIRSA.

12. Waiver of Presumption. The Service Agreement was negotiated and reviewed through the mutual efforts of the parties hereto and the parties agree that no construction shall be made or presumption shall arise for or against either party based on any alleged unequal status of the parties in the negotiation, review or drafting of the Service Agreement.

13. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Contractor certifies, by acceptance of the Service Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction with a Federal or State department or agency. It further certifies that prior to submitting its Bid that it did include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. In the event that vendor or any lower tier participant was unable to certify to this statement, an explanation was attached to the Bid and was determined by the City to be satisfactory to the City.

14. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflicts of Interest. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Service Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Contractor agrees not to give any employee or former employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to this Service Agreement, or to any solicitation or proposal therefor.

Contractor represents that no official, officer, employee or representative of the City during the term of the Service Agreement has or one (1) year thereafter shall have any interest, direct or indirect, in the Service Agreement or the proceeds thereof, except those that may have been disclosed at the time City Council approved the execution of the Service Agreement.

In addition to other remedies it may have for breach of the prohibitions against contingent fees, gratuities, kickbacks and conflict of interest, the City shall have the right to:

1. Cancel the Service Agreement without any liability by the City;
2. Debar or suspend the offending parties from being a Contractor, vendor, or sub-contractor under City contracts;
3. Deduct from the Service Agreement price or consideration, or otherwise recover, the value of anything transferred or received by the Contractor; and
4. Recover such value from the offending parties.

15. Termination for Default or for Convenience of City. The services contemplated by the Service Agreement may be canceled by the City prior to acceptance by the City whenever for any reason and in its sole discretion the City shall determine that such cancellation is in its best interests and convenience.

16. Fund Availability. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If the Service Agreement contemplates the City utilizing state or federal funds to meet its obligations herein, the Service Agreement shall be contingent upon the availability of those funds for payment pursuant to the terms of the Service Agreement.

17. City Council Approval. If the Service Agreement requires the City to pay an amount of money in excess of \$25,000.00 it shall not be deemed valid until it has been approved by the City Council of the City of Aspen.

18. Notices. Any written notices as called for herein may be hand delivered or mailed by certified mail, return receipt requested to the respective person or address listed for the Contractor in the Service Agreement.

19. Non-Discrimination; penalty. No discrimination because of race, color, creed, sex, marital status, affectional or sexual orientation, family responsibility, national origin, ancestry, handicap, or religion shall be made in the employment of persons to perform services under this Service Agreement. Contractor agrees to meet all of the requirements of City's municipal code, Section 13-98, pertaining to non-discrimination in employment.

20. City of Aspen Procurement Code. Notwithstanding anything to the contrary contained herein or in the Contract Documents, the Service Agreement shall be subject to the City of Aspen Procurement Code, Chapter 3 of the Aspen Municipal Code.

21. Compliance with All Laws and Regulations. Contractor shall give all notices and comply with all laws, regulations, and ordinances applicable to the provision of the services contemplated by the Service Agreement. Contractor shall obtain all necessary business licenses and permits, and shall pay all requisite occupation taxes levied by the City of Aspen upon persons engaged in business within the City limits.

22. Waiver. The waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of the Service Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Contractor to which the same may apply and, until complete performance by Contractor of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under the Service Agreement or by law despite any such forbearance or indulgence.

23. Execution of Service Agreement by City. The Service Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. Notwithstanding anything to the contrary contained herein, the Service Agreement shall not be binding upon the City unless duly executed by the City Manager of the City of Aspen (or a duly authorized official in his or her absence).

24. Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.

a. Purpose. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the City, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a Contractor who knowingly hires with an illegal alien to perform work under the Service Agreement. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

b. Definitions. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City.

1. "E-verify program" means the electronic employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law

156, 108th Congress, as amended, that is jointly administered by the United States Department of Homeland Security and the social security Administration, or its successor program.

2. “Department program” means the employment verification program established pursuant to Section 8-17.5-102(5)(c).

3. “Public Contract for Services” means this Service Agreement.

4. “Services” means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

c. By signing this document, Contractor certifies and represents that at this time:

1. Contractor shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Public Contract for Services; and

2. Contractor has participated or attempted to participate in either the e-verify program or the department program in order to verify that new employees are not illegal aliens.

d. Contractor hereby confirms that:

1. Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

2. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Public Contract for Services.

3. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program.

4. Contractor shall not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

5. If Contractor obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify such subcontractor and the City within three days that Contractor has actual knowledge that the subcontractor is employing or subcontracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

7. If Contractor violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Owner may terminate this Service Agreement. If this Service Agreement is so terminated, Contractor shall be liable for actual damages to the Owner arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

25. General Terms.

(a) It is agreed that neither the Service Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified, changed, terminated or amended, waived, superseded or extended except by appropriate written instrument fully executed by the parties.

(b) If any of the provisions of the Service Agreement shall be held invalid, illegal or unenforceable it shall not affect or impair the validity, legality or enforceability of any other provision.

(c) The parties acknowledge and understand that there are no conditions or limitations to this understanding except those as contained herein at the time of the execution hereof and that after execution no alteration, change or modification shall be made except upon a writing signed by the parties.

(d) The Service Agreement shall be governed by the laws of the State of Colorado as from time to time in effect.

26. Electronic Signatures and Electronic Records This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement binding on the Parties, notwithstanding the possible event that all Parties may not have signed the same counterpart. Furthermore, each Party consents to the use of electronic signatures by either Party. The Scope of Work, and any other documents requiring a signature hereunder, may be signed electronically in the manner agreed to by the Parties. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic

record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic documents, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Exhibit B General Services Agreement - As-Needed Excavation Services

EXCAVATION SERVICES INC.

CLIENT: City of Aspen
 JOB NAME: Water Department
 DATE WORK STARTED:

ITEM	UNIT	AMOUNT
LARGE EXCAVATOR	HOURL	\$ 165.00
MEDIUM EXCAVATOR	HOURL	\$ 155.00
SMALL EXCAVATOR	HOURL	\$ 145.00
821 WHEEL LOADER	HOURL	\$ 165.00
BACKHOE	HOURL	\$ 120.00
SKID LOADER	HOURL	\$ 115.00
EXCAVATOR BREAKER	HOURL	\$ 75.00
ROTOMILL	HOURL	\$ 75.00
GRAVEL SLINGER	HOURL	\$ 195.00
ROAD GRADER	HOURL	\$ 165.00
SUPERVISOR	HOURL	\$ 85.00
PICKUP TRUCK	DAY	\$ 170.00
TRUCK & TRAILER	HOURL	\$ 135.00
TANDEM TRUCK	HOURL	\$ 105.00
TANDEM TRUCK & PUP	HOURL	\$ 125.00
WATER TRUCK	HOURL	\$ 110.00
SEPTIC PUMPER	HOURL	\$ 115.00
SMOOTH DRUM COMPACTOR	HOURL	\$ 105.00
SHEEPFOOT COMPACTOR	HOURL	\$ 105.00
WALKBEHIND COMPACTOR	HOURL	\$ 90.00
JJ COMPACTOR	PER DAY	\$ 200.00
LABOR	HOURL	\$ 55.00
6" PUMP	PER DAY	\$ 500.00
SEWER CAMERA	PER DAY	\$ 300.00
CONFINED SPACE EQUIPMENT	PER DAY	\$ 200.00
WATER TRAILER	PER DAY	\$ 750.00
TOPSOIL	TON	\$ 44.50
BOULDERS	TON	\$ 75.89
PITRUN	TON	\$ 21.95
3/4 SCREEN ROCK	TON	\$ 31.00
3/4 ROAD BASE	TON	\$ 25.80
MASONARY SAND	TON	\$ 121.40
DUMP FEES TRASH	TON	\$ 117.65
DUMP FEES DIRT	TON	\$ 19.93
MATERIALS	LUMP SUM	\$ 1.00
FLOW FILL	PER YARD	\$ 250.00
SWMP	LUMP SUM	\$ 800.00
ASPHALT	TON	\$ 136.00
TRENCH BOXES/SHORING	DAY	\$ 500.00
CONCRETE	LUMP SUM	TBD
TRAFFIC CONTROL	LUMP SUM	TBD
OVERTIME	HOURL	\$ 15.00
SHEET TOTAL		



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER FEDERATED MUTUAL INSURANCE COMPANY HOME OFFICE: P.O. BOX 328 OWATONNA, MN 55060	CONTACT NAME: CLIENT CONTACT CENTER PHONE (A/C, No, Ext): 888-333-4949 FAX (A/C, No): 507-446-4664 E-MAIL ADDRESS: CLIENTCONTACTCENTER@FEDINS.COM	
	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: FEDERATED MUTUAL INSURANCE COMPANY 13935 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
INSURED EXCAVATION SERVICES INC PO BOX 1159 CARBONDALE, CO 81623-1159	389-340-1	

COVERAGES **CERTIFICATE NUMBER: 102** **REVISION NUMBER: 0**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	9820246	05/02/2018	05/02/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) EXCLUDED PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	9820246	05/02/2018	05/02/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION	N	N	9820248	05/02/2018	05/02/2019	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	9159232	07/01/2018	07/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

PROJECT NUMBER: 2019-50900

THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED SUBJECT TO THE CONDITIONS OF THE ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU ENDORSEMENT FOR GENERAL LIABILITY.

CERTIFICATE HOLDER

389-340-1
CITY OF ASPEN
130 S GALENA ST
ASPEN, CO 81611-1902

102 0

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

301

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

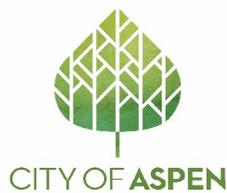
- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement you have entered into with the additional insured; or
 - 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



MEMORANDUM

TO: Mayor and City Council

FROM: Sara Ott, Interim City Manager

MEETING DATE: May 13, 2019

RE: Resolution #60, Series of 2019 - Revised Intergovernmental Agreement for governance of the Aspen/Pitkin County Housing Authority (APCHA)

REQUEST OF COUNCIL: To consider approval of an amended intergovernmental agreement governing the Aspen/Pitkin County Housing Authority (APCHA).

SUMMARY: In 2018, the governing bodies of Pitkin County and the City of Aspen focused time at joint meetings on amendments to the current intergovernmental agreement (IGA) for APCHA to address governance concerns by both bodies. The most recent joint meeting occurred on February 5, 2019 in which several details related to the new the board of directors composition were agreed upon with direction given for the City and County managers to solidify specific language to implement the governing bodies' direction. The attached redline document is a combined effort of city and county staff to incorporate this direction. The draft IGA was presented to City Council for review on April 9th and to the Board of County Commissioners on April 16th and May 7th. The City and County managers attended work sessions to assist with any questions or intent in the proposed language. Since the City Council's last work session, staff have made additional adjustments to the IGA to meet the intent of both governing bodies.

DISCUSSION:

The revisions from the current IGA are:

- a reconstituted APCHA Board of Directors with five members, three which represent the community at large and two elected officials that represent their respective governing body
- alternates for elected officials, one for City Council representation and one for County Commissioner representation
- the role of the APCHA Board is no longer advisory but decisions regarding guideline changes are under the APCHA Board authority
- The APCHA Board has a defined role in the development of APCHA's annual work plan and budget
- language regarding the responsibility for enforcement by the Authority Board has been enhanced and authority clarified
- Remaining topic areas, such as fiscal agent and the executive director reporting relationship are not changed from the current status in this proposed document.

The key revisions from the April 16 draft IGA to today are:

- in the recitals, including the date of the original IGA enter into between the City and County establishing the joint housing authority which had not been included in prior IGAs
- adding an alternate citizen appointed member
- language regarding the responsibility for enforcement by the Authority Board has been enhanced and authority clarified
- adding language to clarify APCHA's role in land use review as an advisory function with the staff, not a policy role of the Board of Directors
- adding IGA sections consistent with County process: Assignability, Entire Agreement, Severability, Government Immunity, Current Year Obligations, Binding Rights and Obligations, Agreement Made in Colorado, Attorney Fees, No Waiver and Authority
- Added electronic delivery as an acceptable method in the Notice section

Items yet to be considered are:

- Joint appointment process for the governing bodies' consideration.
- Process for transitioning from the current Board makeup to the new Board makeup.

An effective date of August 1, 2019 is recommended to provide time for a process for appointment of citizen Board members to be established and a new Authority Board appointed. It is proposed that applications come to the County as a single application point. In both past Commissioner and Council discussions, two alternatives for making joint appointments were identified. One alternative is for a subcommittee composed of two elected BOCC and two elected Council review all applicants and make recommendations for appointments. The other alternative for applicants appear before all 10 elected officials at a joint meeting. For either alternative, each governing body must approve and appointments in a regular meeting.

Remaining topic areas, such as fiscal agent and the executive director reporting relationship are not changed from the current status in this proposed document. At this time, I recommend moving forward with this first major change to address the Board of Directors composition, and that the remaining aforementioned issues be evaluated at a future date.

FINANCIAL/BUDGET IMPACTS: The changes proposed have a minimum financial impact. The most likely expenses are related to implementing the hearing officer model that is currently under consideration by the current APCHA Board, City Council and the Board of County Commissioners. Its assumed that those changes will go forward independent of the IGA amendments.

STAFF RECOMMENDATION: Approve the proposed IGA amendments

Attachment: Resolution approving the IGA

Proposed sixth IGA redline
Proposed sixth IGA clean version

RESOLUTION #60
(Series of 2019)

A RESOLUTION OF THE CITY OF ASPEN REPEALING THE PRIOR INTERGOVERNMENTAL AGREEMENT AND ITS AMENDMENTS CREATING THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY IN THEIR ENTIRETY AND REPLACING SUCH AGREEMENT AND ITS AMENDMENTS WITH AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ASPEN AND PITKIN COUNTY ESTABLISHING THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

WHEREAS, there has been submitted to the City Council an intergovernmental agreement between the City of Aspen, Colorado, and the Board of County Commissioners of Pitkin County, a copy of which agreement is annexed hereto and made a part thereof, and

WHEREAS, The City of Aspen and Pitkin County entered into an Intergovernmental Agreement (IGA) on November 8, 1982 establishing a Joint City/County Housing Authority and entered into an IGA on January 9, 1984, a First Amended and Restated IGA on September 26, 1989, a Second Amended and Restated IGA on September 13, 1999, a Third Amended and Restated IGA on October 28, 2002, a Fourth Amended and Restated IGA on December 20, 2007, and a Fifth Amended and Restated IGA on December 18, 2013, establishing a multi-jurisdictional housing authority (the Authority) as a separate government entity, and

WHEREAS, the City and County desire to continue to support an independent housing authority that has all of the powers set forth at Section 29-1-204.5, C.R.S., and

WHEREAS, the City and the County desire to repeal and replace the Intergovernmental Agreements listed above, and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City of Aspen County to approve this Resolution.

NOW, THEREFORE BE IT RESOLVED that the City Council hereby repeals the previous Intergovernmental Agreement and its amendments set forth above in their entirety and approves the Intergovernmental Agreement, attached hereto as Exhibit A, between the City of Aspen and Pitkin County establishing the Aspen/Pitkin County Housing Authority and authorizes the Mayor to sign this Resolution and upon the satisfaction of the City Manager and City Attorney to sign such Intergovernmental Agreement.

FINALLY, adopted, passed and approved by the City Council of the City of Aspen on the 13th day of May 2019.

Steven Skadron, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on the day hereinabove stated.

Linda Manning, City Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
ASPEN AND PITKIN COUNTY ESTABLISHING THE ASPEN/PITKIN
COUNTY HOUSING AUTHORITY**

This **INTERGOVERNMENTAL AGREEMENT** (hereinafter referred to as “Agreement”), made and entered into this _____ day of May, 2019, by and between the CITY OF ASPEN, Colorado, a home rule municipal corporation (hereinafter referred to as “City”) and the BOARD OF COUNTY COMMISSIONERS of Pitkin County, Colorado, a body corporate and politic (hereinafter referred to as “County”). This Agreement shall become effective as of the 1st day of August, 2019 (“Effective Date”) regardless of the dates on which it is signed.

RECITALS:

WHEREAS, the City is authorized by Article XX, Section 6 of the Colorado Constitution and City and County are each authorized by Article XIV, Section 18 of the Colorado Constitution, Section 29-1-204.5, Colorado Revised Statutes to contract with each other to establish a multi-jurisdictional housing authority as a separate government entity; and

WHEREAS, the City and County entered into an *Intergovernmental Agreement* on November 8, 1982, an *Intergovernmental Agreement* on January 9, 1984, an *Amended and Restated Intergovernmental Agreement* on September 26, 1989, a *Second Amended and Restated Intergovernmental Agreement* on September 13, 1999, a *Third Amended and Restated Intergovernmental Agreement* on October 28, 2002, a *Fourth Amended and Restated Intergovernmental Agreement* on December 20, 2007, and a Fifth Amended and Restated Intergovernmental Agreement on December, 2013 establishing a multi-jurisdictional housing authority under the provision of C.R.S. 1973, Section 29-1-204.5 which authority is known as the Aspen/Pitkin County Housing Authority (APCHA) (hereinafter referred to as “Authority”) for the purpose of providing a program and a system to assure the existence of a supply of desirable and affordable housing for permanent residents, persons employed in the City or the County, senior citizens, disabled persons and other population segments residing or needing to reside in the Roaring Fork Valley which are necessary for a balanced community; and

WHEREAS, the City and County desire to create an independent housing authority that has all of the powers set forth at Section 29-1-204.5, C.R.S.; and

WHEREAS, the City and the County desire to repeal all prior agreements and enter into a revised Agreement with the provisions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to be derived hereby, the City and the County hereby agree to repeal the *Intergovernmental Agreement* of November 8, 1982, the *Intergovernmental Agreement* of January 9, 1984, the *Intergovernmental Agreement* of January 9, 1984, the *Amended and Restated Intergovernmental Agreement* on September 26, 1989, the *Second Amended and Restated Intergovernmental Agreement* on September 13, 1989, the *Third Amended and Restated Intergovernmental Agreement* on October 28, 2002, the *Fourth Amended and Restated Intergovernmental Agreement* on December 20, 2007, the *Fifth Amended and Restated Intergovernmental Agreement* on December, 2013, and approve this agreement to be effective on the date first stated above (Effective Date).

I. MULTI-JURISDICTIONAL HOUSING AUTHORITY – PURPOSE:

The Aspen/Pitkin County Housing Authority (hereinafter referred to as “Authority”) has been established as a multi-jurisdictional housing authority for the purpose of assisting the City and County, upon request by either party, in effecting the planning, financing, acquisition, construction, development, reconstruction or repair, maintenance, management and operation of housing projects pursuant to a multi-jurisdictional plan to provide residential facilities and dwelling accommodations at rental or sale prices within the means of families or persons of low, moderate and middle income who are employed in the City or the County, who reside or need to reside in the City or County, and who have identifiable needs for affordable housing; e.g., limited incomes, senior citizens and disabled persons, as defined by the Authority in published guidelines. The Authority shall be a political subdivision and a public corporation for the State of Colorado, separate from the City and County, and shall be a validly created and existing political subdivision and public corporation of the State of Colorado. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of Articles 10.5 (the “Public Deposit Protection Act”) of Title 11, Colorado Revised Statutes, shall apply to monies of the Authority.

The Authority shall have any and all powers, duties, rights and obligations as such are set forth herein and subject to the terms and conditions of this Agreement. In order to facilitate management oversight and to provide additional resources to the Authority, the Authority shall delegate to the City certain administrative functions as more fully described herein:

II. BOARD OF DIRECTORS:

A. Number, Manner of Appointment, Qualifications, etc.:

The Authority Board shall consist of five (5) directors (hereinafter referred to as “Directors”), and three (3) alternates to be appointed as follows:

1. One (1) Director shall be a member of the City Council and shall be appointed by the City Council. One (1) Director shall be a member of the Board of County Commissioners and shall be appointed by the Board of County Commissioners.
2. One (1) Alternate Director shall be a member of the City Council and shall be appointed by the City Council. One (1) Alternate Director shall be a member of the Board of County Commissioners and shall be appointed by the Board of County Commissioners. In the event the Director from City Council or the Director from the Board of County Commissioners are not present, they may only be represented by the Alternate Director appointed from their respective elected body.
3. Three (3) Directors and one (1) Alternate Director shall be jointly appointed by the City Council and Board of County Commissioners, and shall serve staggered terms.
4. As soon as reasonable after the effective date of this Amended Agreement, the City Council and the Board of County Commissioners shall jointly appoint the Directors. All Directors shall be appointed for a four-year term. Each director will be term limited to two (2) consecutive four-year terms. A one-year absence from the Authority Board will be required before a director can reapply. Terms limits will begin with the approval of this *Agreement*. To initiate staggered term, the first term for each appointment shall be one (1) Director for two (2) years, one (1) Director for three (3) years, one (1) Director for four (4) years and the Alternate Director for four (4) years.

5. Directors and the Alternate Directors shall continue to serve as Directors until such time as a successor has been appointed.
6. Jointly appointed Directors and Alternate Director may be removed at the recommendation of the Authority Board with approval from City Council and County Commissioners. Upon removal of a jointly appointed Director or Alternate Director, a replacement shall be appointed for the unexpired term of the removed Director or Alternate pursuant to paragraph 2(A) 3 of this agreement.
7. Directors appointed from the City Council and Board of County Commissioners shall serve at the pleasure of their respective elected bodies.

B. Officers.

The officers of the Authority shall be a Chair, a Vice Chair, a Treasurer, and a Secretary.

1. *Chair*. The Chair shall preside at all meetings of the Authority. At each meeting, the Chair shall submit such recommendations and information as she or he may consider proper concerning the business, affairs and policies of the Authority.
2. *Vice Chair*. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or death of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Authority shall select a new Chair.
3. *Treasurer*. The Treasurer shall perform the duties of the Chair in the absence or incapacity of both the Chair and the Vice Chair. With respect to expenses incurred directly by the Authority (as distinguished from expenses of either the City or County for affordable housing projects and their operations), either the Treasurer or the Secretary shall approve all orders and checks for payment of money and shall payout and disburse such monies under the direction of the City's Finance Director. The Treasurer shall serve as advisor to the Authority and the Board on financial matters.
4. *Secretary*. The Secretary shall ensure that the records of the Authority are properly maintained, shall act as Secretary of the meetings of the Authority and ensure that all votes are recorded, and shall ensure that a record of the proceedings of the Authority are maintained in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his or her office.
5. *Election or Appointment*. The Chair, Vice Chair, Treasurer, and Secretary shall be elected at the annual meeting of the Authority from among the Directors of the Board, and shall hold office for one year or until their successors are elected and qualified.
6. *Vacancies*. Should the office of Chair, Vice Chair, Treasurer, or Secretary become vacant, the Board shall elect a successor from its membership at the next regular meeting and such election shall be for the unexpired term of said office.

C. Voting Requirements:

1. *Quorum*. The powers of the Authority shall be vested in the Directors of the Board in office from time to time. Three (3) Directors of the Board, with a representative from the

City Council and a representative from the County Commissioners present, shall constitute a quorum for the purpose of conducting Authority business, exercising Authority powers and for all other purposes. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Directors of the Board present. Alternate Directors may be counted for purposes of determining the existence of a quorum at a meeting and may have his or her vote counted only when the Director of the body they represent is not present.

2. *Manner of Voting.* The voting on all questions coming before the Authority shall be by roll call, and the yeas and nays shall be entered upon the minutes of each meeting by name, except on the election of officers that may be by ballot.

D. Duties of the Officers.

The officers of the Authority shall perform the duties and functions of the Authority as prescribed herein and such other duties and functions as may from time to time be required by the Authority, the by-laws or rules and regulations of the Authority, or upon the request of the City and County.

III. DUTIES OF THE PARTIES:

A. Personnel.

1. An Executive Director of the Authority shall be employed by the City who shall report to and be supervised by the City Manager. The City Manager and County Manager shall jointly hire the Executive Director. The City Manager shall have the authority to terminate the employment of the Executive Director in accordance with City Personnel Policies and Procedures, but shall exercise this authority only after reasonable consultation with the County Manager.
2. The Executive Director and all other personnel employed to work under the supervision of the Executive Director shall be City employees, subject to the City's payroll, benefits, and personnel policies and procedures (including disciplinary procedures).
3. The Executive Director shall work under the supervision of the City Manager and shall receive work assignments from the City Manager consistent with the Strategic Plan and Annual Work Plan/Budget (see section III,C,1). The Authority Board may suggest work assignments for the Executive Director to the City Manager, but shall have no authority to directly assign work, tasks, or priorities to the Executive Director or any of his or her staff.
4. Nothing in this Agreement shall create, or is intended to create, or shall be construed to constitute a contract of employment, express or implied, between the Executive Director and the Authority, the City or the County.

B. Finances and Accounting.

1. The Executive Director shall annually consult and cooperatively work with the City and County Finance Directors or their representatives to prepare proposed budgets for the City and County relating to affordable housing in their respective jurisdictions. The Authority Board, upon reviewing the annual work plan and budget as presented by the

Executive Director shall make recommendation to the City and County for their adoption. The annual budgets shall include funds necessary to reimburse the City for overhead expenses for personnel, finance, administrative, legal, and asset management services consistent with fees charged to other City departments.

2. The Executive Director shall annually consult and cooperatively work with the City's Finance Director or their representative to ensure the proper care and custody of all funds of the Authority, the prompt payment of all obligations of the Authority, and the keeping of regular books of accounts showing receipts and expenditures of the Authority. The Executive Director shall render to the Authority, the City and the County, at their regular meetings, or sooner if requested, an account of Authority transactions and also of the financial condition of the Authority.
3. All accounting, payroll, and audit services for the Authority shall be performed by the Finance Department of the City.
4. The City's procurement policies, contract documents, and approval policies shall be used for all procurements of goods and services of the Authority.
5. For each fiscal year of the City, the County and the Authority (each January 1 through each December 31), the City and County shall each appropriate their prorated share of operational monies necessary to provide for any budgeted deficit arising in connection with the Authority's operations which has been approved by the City and County, provided, however, that bonds, notes or other obligations payable solely from revenues as described in Section III hereof shall never constitute an indebtedness of the City or the County. The City and County shall each pay for 50% of the normal operating expenses of the Authority. This shall include such normal operating expenses as guideline development, qualifying applicants, enforcement, property management, etc. The City and County shall pay its share of any special projects, which either party may request to be included in the Annual Work Plan.
6. The County shall pay to the City for the benefit of the Authority its share of the Authority's annual budget upon the request of the Finance Director of the City. Both the City Council and the Board of County Commissioners shall approve any increases to the expense budget.
7. On or before June 15 of each fiscal year, the actual operations for the Authority for the immediate preceding fiscal year shall be reviewed by the City and County Finance Directors with the Executive Director for the determination of any necessary final reimbursements (and, therefore, necessary supplemental appropriations of monies by the City and the County) as a result of any non-budget appropriation of Authority staff or expenditure. The City and County hereby agree to make all necessary appropriations within a reasonable time to reconcile the final appropriations of each entity.

C. *Operations.*

1. *Strategic Plan and Annual Work Plan/Budget.* In the first year of this agreement, the Executive Director will work with the Authority Board to create a strategic plan defining the overall mission, vision, values and key objectives of the Authority. The strategic plan shall be ratified by the City Council and Board of County Commissioners and shall be updated at a minimum every five years. Changes to the Strategic plan shall be ratified by

the City Council and Board of County Commissioners. Pursuant to the approved strategic plan the Authority Board, working with the Executive Director, shall prepare an annual work plan and budget that specifies goals, tasks, responsible employees, timelines, and required budget for the operation of the Authority. The annual work plan and budget shall include a summary detailing progress made in the implementation of objectives set forth in the Authority's strategic plan. Following the finalization of the annual work plan by the Authority Board, the Executive Director shall meet with the City and County Managers. The Annual Work Plan shall be presented in August for the following Calendar Year and shall be the basis of the Authority's funding request to the City and County.

2. *Affordable Housing Guidelines*. The Executive Director shall review the Affordable Housing Guidelines when necessary, including updates and recommendations for changes that:
 - a. Identifies category qualifications for ownership and rental housing within the City and County for the population segments identified by the Authority as required by existing agreements and land use regulations.
 - b. The Authority Board shall review the Affordable Housing Guidelines, including deletions and additions, submitted to it by the Executive Director. Final approval of Guideline changes shall be made by the Authority Board. Guideline changes shall be brought forward in a resolution that shall require two readings separated by a minimum of 10 business days and a public hearing and public comment at the second reading.

3. *The Authority Board*. The Authority Board shall meet at least monthly to conduct its business. All meetings of the Authority shall be conducted in accordance with the Colorado Open Meetings Law, Sections 24-6-401, *et seq.*, C.R.S. and the City of Aspen Municipal Code. The Authority shall be responsible for the following duties:
 - a. To act as affordable housing advocates in all of its business by representing the views and perspectives of the larger communities of the City and County and translating those views and perspectives into concrete recommendations to the City and County; and
 - b. To review and make recommendations to the City and County with respect to the Strategic Plan, Annual Work Plan/Budget, Housing Guidelines, Affordable Housing Action Plans of the Aspen Area Community Plan, and Pitkin County Comprehensive Plans and Master Plans and advise on any other affordable housing related matters referred to it by either the City or County; and
 - c. To review specific development proposals initiated by the City or County and make recommendations thereon upon the request of either the City or County; and
 - d. To assist the City, County, and Executive Director, upon request, to define the need, planning, undertaking, construction, operation, or financing of low, lower moderate, upper moderate, middle and upper middle income housing for the population segments designated here or identified by the Authority residing in or needing to reside in the City or the County; and
 - e. To assist the City, County and Executive Director, upon request, to plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate housing projects pursuant to the Annual Work Plan; and

- f. To assist the City, County and Executive Director, upon request, to purchase, acquire, obtain options, hold; lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service from firms, corporations, the City, the County, other governmental entities or any other persons; and
 - g. To assist the City, County and Executive Director, upon request, to investigate housing needs within the jurisdiction of the City or the County and the means and methods for improving those conditions; and
 - h. To review growth management policy applications (or equivalent application procedures as the same are developed or established from time to time) by developers for low, lower moderate; upper moderate, middle and upper middle income housing in the City or the County as requested by the respective Community Development Departments of the City or the County for conformance with housing needs; and
 - i. To enforce all aspects of the affordable housing program, including, but not necessarily limited to, the enforcement of deed restrictions (where the beneficiary is the City of Aspen, Pitkin County, and/or the Authority), and the adoption of guidelines or regulations for the implementation of the Authority's duties pursuant to CRS 29-1-204.5 and this IGA. This includes the authority to adopt a program of civil penalties to be imposed for violations of deed restrictions and the Authority's guidelines or regulations, and to establish the position of a hearing officer for such purposes
4. *The Executive Director.* The Executive Director shall be responsible for the following duties in addition to any duties assigned to him or her by the City Manager:
- a. Working closely with the Authority Board and the County and City Managers to develop an Annual Work Plan and thereafter implementing said Work Plan under the supervision of the City Manager; and
 - b. Maintaining records of all existing rental or resale deed restricted housing, including City Accessory Dwelling Units (ADUs) and County Caretaker Dwelling Units (CDUs) for the population segments designated herein or identified by the Authority and assure that such housing is used and occupied in accordance with existing City or County development approvals, contracts, or financing requirements; and
 - c. Taking all steps reasonably necessary to assure that all deed restricted units of housing comply with City and County regulations or resolutions concerning the development and administration of rental or resale restricted housing, including but not limited to administrative review of City and County land use applications as requested by the City or County Community Development department; and
 - d. Negotiating contracts as required to provide for management of deed-restricted Authority units (as that term is defined in the Affordable Housing Guidelines as such guidelines are published, modified, amended and supplemented from time to time); and

- e. To review and recommend establishment of a computerized rental availability record system for use by the City, the County, the population segments designated herein or identified by the Authority and members of the general public; and
- f. Oversee the process for marketing and reviewing qualification of applicants for rental deed restricted or for sale affordable housing units, and for marketing, reviewing qualifications of applicants for, and arranging for transfer of title of deed restricted units; and
- g. Investigate and maintain data indicating housing needs within the jurisdiction of the City or the County for the population segments designated herein or identified by the Authority and the means and methods for improving those conditions; and
- h. To review Aspen Area Community Plan and County neighborhood and comprehensive plans and strategic initiative related to housing and recommend code changes associated with the provisions o of said plans as they are modified, amended and supplemented from time to time.

IV. BONDS, NOTES AND OTHER OBLIGATIONS:

- A.** The bonds, notes, and other obligations of the Authority shall not be the debts, liabilities, or obligations of the City or the County unless expressly assumed by the City or the County.
- B.** The City and the County may provide for payment to the Authority of funds from proprietary revenues for services rendered or facilities provided by the Authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth herein, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the Authority.
- C.** To carry out the purposes for which the Authority was established, the Authority is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the function, service, or facilities of the Authority or from any other available funds of the Authority. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided by law for any of the contracting parties to this Intergovernmental Agreement; except that bonds, notes, or other obligations so issued shall not constitute an indebtedness of the Authority, the City or the County within the meaning of any constitutional, home rule charter or statutory limitation or other provision unless expressly assumed by the City or the County. Each bond, note, or other obligation issued under this subsection shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the Authority pledged for the payment thereof unless expressly assumed by the City or the County and that said bond, note, or other obligation does not constitute a debt of the Authority, the City or the County or within the meaning of any constitutional, home rule charter or statutory limitations or provisions unless expressly assumed by the City or the County. Notwithstanding anything in this Section IV to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty (40) years from their respective issue dates, shall bear interest at such rates, and shall be sold at such prices at, above or below the principal amount thereof, as shall be determined by the Board.

- D.* The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the Board to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the Authority. The bonds, notes and other obligations of the Authority and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes pursuant to the Colorado Revised Statutes.

V. LEGAL ASSISTANCE:

The Authority Board may retain independent legal counsel, as needed, for day-to-day consultation and legal advice. The City Attorney shall review all contract documents that purport to legally obligate the City in any fashion. The County Attorney shall review all contract documents that purport to legally obligate the County in any fashion.

VI. DISPOSITION OF ASSETS UPON TERMINATION:

In the event of the termination of this Intergovernmental Agreement, which termination may only occur in accordance with the requirements and limitations of Section VII hereof, and the resulting dissolution of the Authority, the assets of the Authority shall be distributed as follows:

- A.* All assets acquired from contributions from the City or the County shall be returned to the contributing party if said assets are still in existence.
- B.* If assets contributed to the Authority are not in existence, the contributing party shall have the option of receiving the fair market value of the asset at the time of disposal by the Authority in either cash or assets of the Authority.
- C.* All remaining assets acquired by the Authority after the date of this Intergovernmental Agreement from funds provided by the parties shall be distributed to the parties on the basis of the appraised value of said assets at the time of termination and in the same proportion as the respective contributions of funds by the parties for acquisition of the asset.
- D.* The City and the County may agree to dispose of any assets of the Authority in any other acceptable manner.
- E.* If the City and the County cannot agree on the disposition of any assets of the Authority within sixty (60) days after termination, said assets shall be subject to an independent appraisal and shall be sold at public auction as soon as practicable with the proceeds allocated to the City and the County in the same proportion as the total contribution of funds by the respective parties for acquisition of the asset.

VII. ANNUAL RENEWAL AND TERMINATION:

The term of this Intergovernmental Agreement shall be from the effective date hereof through _____, and shall automatically be renewed for successive one-year periods thereafter. Either party hereto may terminate this Intergovernmental Agreement for any reason upon ninety (90) days' written notice, provided, however, that this Intergovernmental Agreement may not be terminated or rescinded so long as the Authority has bonds, notes, or other obligations outstanding,

unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations; provided, however, that if full payment has been provided by escrow, such termination or rescission shall not occur unless nationally recognized bond counsel has delivered an opinion to the effect that such termination or rescission, in and of itself, will not adversely affect the tax status of the interest on such escrowed obligations. Furthermore, this Intergovernmental Agreement may not be terminated if the Authority has obligations to the U.S. Department of Housing and Urban Development under any Low Rent Public Housing Program, or other similar program, unless those obligations are assumed by the City or the County.

VIII. ASSIGNABILITY:

This agreement is not assignable by either party.

IX. MODIFICATION OF THIS AGREEMENT:

This Agreement may be changed or modified only in writing by an agreement approved by the City Council and Board of County Commissioners, acting separate and signed by authorized officers.

X. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the parties and all other promises and agreements relating to the subject of this Agreement, whether oral or written, are merged herein.

XI. SEVERABILITY:

Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.

XII. NOTICE:

Any notice required or permitted under this Agreement shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below and by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage pre-paid to the mailing addresses set forth below. Each party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

To: City of Aspen
Aspen City Council
c/o City Manager
130 South Galena Street
Aspen, Colorado 81611

With copies to:
Aspen City Attorney
130 South Galena Street
Aspen, Colorado 81611

To: Pitkin County
Board of County Commissioners
c/o County Manager
530 East Main Street, Suite 302
Aspen, Colorado 81611
jon.peacock@pitkincounty.com

With Copies to:
Pitkin County Attorney's Office
530 E Main Street, Suite 301
Aspen, Colorado 81611
attorney@pitkincounty.com

To: Aspen/Pitkin County Housing Authority
c/o Executive Director
210 E. Hyman Ave., Suite 202
Aspen, CO 81611

XIII. GOVERNMENT IMMUNITY:

The parties agree and understand that both parties are relying on and do not waive, by any provisions of this Agreement, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended or otherwise available to the parties or any of their officers, agents, or employees.

XIV. CURRENT YEAR OBLIGATIONS.

The parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of the parties. The parties' obligations under this Agreement are subject to each individual party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision of this Agreement shall be construed or interpreted as creating a multiple fiscal year direct or indirect debt or other financial obligation of either or both parties within the meaning of any constitutional or statutory debt limitation. This Agreement shall not be construed to pledge or create a lien on any class or source of either parties' bonds or any obligations payable from any class or source of each individual party's money.

XV. BINDING RIGHTS AND OBLIGATIONS.

The rights and obligations of the parties under this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

XVI. AGREEMENT MADE IN COLORADO.

This Agreement shall be construed according to the laws of the State of Colorado, and venue for any action shall be in the District Court in and for Pitkin County, Colorado.

XVII. ATTORNEY FEES.

In the event that legal action is necessary to enforce any of the provisions of this Agreement, the substantially prevailing party, whether by final judgment or out of court settlement, shall recover from the other party all costs and expenses of such action or suit including reasonable attorney fees.

XVIII. NO WAIVER.

The waiver by any party to this Agreement of any term or condition of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

XIX. AUTHORITY.

Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

The foregoing Agreement is approved by [other governmental entity] at its regular meeting held on the ____ day of _____, 2019.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement on the day and year first above written.

ATTEST:

CITY COUNCIL OF ASPEN, COLORADO

By: _____
Linda Manning, Town Clerk

By: _____
Steven Skadron, Mayor

APPROVED AS TO FORM:

By: _____
James True, City Attorney

BOARD OF COUNTY COMMISSIONERS OF
PITKIN COUNTY, COLORADO

APPROVED AS TO FORM:

By: _____
Greg Poschman, Chair

By: _____
John Ely, County Attorney

Manager Approval:

By: _____
Jon Peacock, County Manager

SIXTH AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ASPEN AND PITKIN COUNTY ESTABLISHING THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

This ~~FIFTH SIXTH AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT~~ (hereinafter referred to as "Agreement"), made and entered into this _____ day of ~~December 2013~~, May, 2019, by and between the CITY OF ASPEN, Colorado, a home rule municipal corporation (hereinafter referred to as "City") and the BOARD OF COUNTY COMMISSIONERS of Pitkin County, Colorado, a body corporate and politic (hereinafter referred to as "County"). This Agreement shall become effective as of the 1st day of August, 2019 ("Effective Date") regardless of the dates on which it is signed.

WITNESSETH RECITALS:

WHEREAS, the City is authorized by Article XX, Section 6 of the Colorado Constitution and City and County are each authorized by Article XIV, Section 18 of the Colorado Constitution, Section 29-1-204.5, Colorado Revised Statutes to contract with each other to establish a multi-jurisdictional housing authority as a separate government entity; and

WHEREAS, the City and County entered into an Intergovernmental Agreement on November 8, 1982, an *Intergovernmental Agreement* on January 9, 1984, an *Amended and Restated Intergovernmental Agreement* on September 26, 1989, a *Second Amended and Restated Intergovernmental Agreement* on September 13, 1999, a *Third Amended and Restated Intergovernmental Agreement* on October 28, 2002, a *Fourth Amended and Restated Intergovernmental Agreement* on December 20, 2007, and a *Fifth Amended and Restated Intergovernmental Agreement* on December, 2013 establishing a multi- jurisdictional housing authority under the provision of C.R.S. 1973, Section 29-1-204.5 which authority is known as the Aspen/Pitkin County Housing Authority (APCHA, hereinafter referred to as "Authority") for the purpose of providing a program and a system to assure the existence of a supply of desirable and affordable housing for permanent residents, persons employed in the City or the County, senior citizens, disabled persons and other population segments residing or needing to reside in the Roaring Fork Valley which are necessary for a balanced community; and

WHEREAS, the City and County desire to create an independent housing authority that has all of the powers set forth at Section 29-1-204.5, C.R.S.; and

WHEREAS, the City and the County desire to repeal all prior agreements and enter into a revised restated agreement with the provisions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to be derived hereby, the City and the County hereby ~~amend and restate the agree to repeal the Intergovernmental Agreement of November 8, 1982, the Intergovernmental Agreement of January 9, 1984, the Intergovernmental Agreement of January 9, 1984, the Amended and Restated Intergovernmental Agreement on September 26, 1989, the Second Amended and Restated Intergovernmental Agreement on September 13, 1989, the Third Amended and Restated Intergovernmental Agreement on October 28, 2002, the Fourth Amended and Restated Intergovernmental Agreement on December 20, 2007, the Fifth Amended and Restated Intergovernmental Agreement on December, 2013, the Sixth Amended and Restated Intergovernmental Agreement and approve~~ this agreement to be effective on the date first stated above (Effective Date). ~~and said Agreement shall replace and supersede all prior agreements of any kind, to the extent and for the limited purpose as such other~~

~~agreements may be related to the provision of services by the Aspen/Pitkin County Housing Authority, and the previous Agreement as amended is hereby cancelled and of no further effect, and to read as follows:~~

I. MULTI-JURISDICTIONAL HOUSING AUTHORITY – PURPOSE:

The Aspen/Pitkin County Housing Authority (hereinafter referred to as “Authority”) has been established as a multi-jurisdictional housing authority for the purpose of assisting the City and County, upon request by either party, in effecting the planning, financing, acquisition, construction, development, reconstruction or repair, maintenance, management and operation of housing projects pursuant to a multi-jurisdictional plan to provide residential facilities and dwelling accommodations at rental or sale prices within the means of families or persons of low, moderate and middle income who are employed in the City or the County, who reside or need to reside in the City or County, and who have identifiable needs for affordable housing; e.g., limited incomes, senior citizens and disabled persons, as defined by the Authority in published guidelines. The Authority shall be a political subdivision and a public corporation for the State of Colorado, separate from the City and County, and shall be a validly created and existing political subdivision and public corporation of the State of Colorado. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of Articles 10.5 (the “Public Deposit Protection Act”) of Title 11, Colorado Revised Statutes, shall apply to monies of the Authority.

The Authority shall have any and all powers, duties, rights and obligations as such are set forth herein and subject to the terms and conditions of this Agreement. In order to facilitate management oversight and to provide additional resources to the Authority, the Authority shall delegate to the City certain administrative functions as more fully described herein:

II. BOARD OF DIRECTORS:

A. Number, Manner of Appointment, Qualifications, etc.:

The Authority Board shall consist of five (5) directors (hereinafter referred to as “Directors”), and ~~two (2)~~ three (3) alternates to be appointed as follows:

1. One (1) Director shall be a member of the City Council and shall be appointed by the City Council. One (1) Director shall be a member of the Board of County Commissioners and shall be appointed by the Board of County Commissioners.
2. One (1) Alternate Director shall be a member of the City Council and shall be appointed by the City Council. One (1) Alternate Director shall be a member of the Board of County Commissioners and shall be appointed by the Board of County Commissioners. In the event the Director from City Council or the Director from the Board of County Commissioners are not present, they may only be represented by the Alternate Director appointed from their respective elected body.
3. Three (3) Directors and one (1) Alternate Director shall be jointly appointed by the City Council and Board of County Commissioners, and shall serve staggered terms.
4. As soon as reasonable after the effective date of this Amended Agreement, the City Council and the Board of County Commissioners shall jointly appoint the Directors. All Directors shall be appointed for a four-year term. Each director will be term limited to two (2) consecutive four-year terms. A one-year absence from the Authority Board will be required before a director can reapply. Terms limits will begin with the approval of this *Agreement*. To initiate staggered term, the first term for each appointment shall be one (1) Director for two (2) years, one (1) Director for three (3) years, one (1) Director

for four (4) years and the Alternate Director for four (4) years.

5. Directors and the Alternate Directors shall continue to serve as Directors until such time as a successor has been appointed.
6. Jointly appointed Directors and Alternate Director may be removed at the recommendation of the Authority Board with approval from City Council and County Commissioners. Upon removal of a jointly appointed Director or Alternate Director, a replacement shall be appointed for the unexpired term of the removed Director or Alternate pursuant to paragraph 2(A) ~~3~~ of this agreement.
- ~~6.7.~~ Directors appointed from the City Council and Board of County Commissioners shall serve at the pleasure of their respective elected bodies.

B. Officers.

The officers of the Authority shall be a Chair, a Vice Chair, a Treasurer, and a Secretary.

1. Chair. The Chair shall preside at all meetings of the Authority. At each meeting, the Chair shall submit such recommendations and information as she or he may consider proper concerning the business, affairs and policies of the Authority.
2. Vice Chair. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or death of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Authority shall select a new Chair.
3. Treasurer. The Treasurer shall perform the duties of the Chair in the absence or incapacity of both the Chair and the Vice Chair. With respect to expenses incurred directly by the Authority (as distinguished from expenses of either the City or County for affordable housing projects and their operations), either the Treasurer or the Secretary shall approve all orders and checks for payment of money and shall payout and disburse such monies under the direction of the City's Finance Director. The Treasurer shall serve as advisor to the Authority and the Board on financial matters.
4. Secretary. The Secretary shall ensure that the records of the Authority are properly maintained, shall act as Secretary of the meetings of the Authority and ensure that all votes are recorded, and shall ensure that a record of the proceedings of the Authority are maintained in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his or her office.
5. Election or Appointment. The Chair, Vice Chair, Treasurer, and Secretary shall be elected at the annual meeting of the Authority from among the Directors of the Board, and shall hold office for one year or until their successors are elected and qualified.
6. Vacancies. Should the office of Chair, Vice Chair, Treasurer, or Secretary become vacant, the Board shall elect a successor from its membership at the next regular meeting and such election shall be for the unexpired term of said office.

C. Voting Requirements:

1. Quorum. The powers of the Authority shall be vested in the Directors of the Board in

office from time to time. Three (3) Directors of the Board, with a representative from the City Council and a representative from the County Commissioners present, shall constitute a quorum for the purpose of conducting Authority business, exercising Authority powers and for all other purposes. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Directors of the Board present. Alternate Directors may be counted for purposes of determining the existence of a quorum at a meeting and may have his or her vote counted only when the Director of the body they represent is not present.

2. *Manner of Voting.* The voting on all questions coming before the Authority shall be by roll call, and the yeas and nays shall be entered upon the minutes of each meeting by name, except on the election of officers that may be by ballot.

D. Duties of the Officers.

The officers of the Authority shall perform the duties and functions of the Authority as prescribed herein and such other duties and functions as may from time to time be required by the Authority, the by-laws or rules and regulations of the Authority, or upon the request of the City and County.

III. DUTIES OF THE PARTIES:

A. Personnel.

1. An Executive Director of the Authority shall be employed by the City who shall report to and be supervised by the City Manager. The City Manager and County Manager shall jointly hire the Executive Director. The City Manager shall have the authority to terminate the employment of the Executive Director in accordance with City Personnel Policies and Procedures, but shall exercise this authority only after reasonable consultation with the County Manager.
2. The Executive Director and all other personnel employed to work under the supervision of the Executive Director shall be City employees, subject to the City's payroll, benefits, and personnel policies and procedures (including disciplinary procedures).
3. The Executive Director shall work under the supervision of the City Manager and shall receive work assignments from the City Manager consistent with the Strategic Plan and Annual Work Plan/Budget (see section III,C,1). The Authority Board may suggest work assignments for the Executive Director to the City Manager, but shall have no authority to directly assign work, tasks, or priorities to the Executive Director or any of his or her staff.
4. Nothing in this Agreement shall create, or is intended to create, or shall be construed to constitute a contract of employment, express or implied, between the Executive Director and the Authority, the City or the County.

B. Finances and Accounting.

1. The Executive Director shall annually consult and cooperatively work with the City and County Finance Directors or their representatives to prepare proposed budgets for the City and County relating to affordable housing in their respective jurisdictions. The Authority Board, upon reviewing the annual work plan and budget as presented by the

Executive Director shall make recommendation to the City and County for their adoption. The annual budgets shall include funds necessary to reimburse the City for overhead expenses for personnel, finance, administrative, legal, and asset management services consistent with fees charged to other City departments.

2. The Executive Director shall annually consult and cooperatively work with the City's Finance Director or their representative to ensure the proper care and custody of all funds of the Authority, the prompt payment of all obligations of the Authority, and the keeping of regular books of accounts showing receipts and expenditures of the Authority. The Executive Director shall render to the Authority, the City and the County, at their regular meetings, or sooner if requested, an account of Authority transactions and also of the financial condition of the Authority.
3. All accounting, payroll, and audit services for the Authority shall be performed by the Finance Department of the City.
4. The City's procurement policies, contract documents, and approval policies shall be used for all procurements of goods and services of the Authority.
5. For each fiscal year of the City, the County and the Authority (each January 1 through each December 31), the City and County shall each appropriate their prorated share of operational monies necessary to provide for any budgeted deficit arising in connection with the Authority's operations which has been approved by the City and County, provided, however, that bonds, notes or other obligations payable solely from revenues as described in Section III hereof shall never constitute an indebtedness of the City or the County. The City and County shall each pay for 50% of the normal operating expenses of the Authority. This shall include such normal operating expenses as guideline development, qualifying applicants, enforcement, property management, etc. The City and County shall pay its share of any special projects, which either party may request to be included in the Annual Work Plan.
6. The County shall pay to the City for the benefit of the Authority its share of the Authority's annual budget upon the request of the Finance Director of the City. Both the City Council and the Board of County Commissioners shall approve any increases to the expense budget.
7. On or before June 15 of each fiscal year, the actual operations for the Authority for the immediate preceding fiscal year shall be reviewed by the City and County Finance Directors with the Executive Director for the determination of any necessary final reimbursements (and, therefore, necessary supplemental appropriations of monies by the City and the County) as a result of any non-budget appropriation of Authority staff or expenditure. The City and County hereby agree to make all necessary appropriations within a reasonable time to reconcile the final appropriations of each entity.

C. *Operations.*

1. Strategic Plan and Annual Work Plan/Budget. In the first year of this agreement, the Executive Director will work with the Authority APCA Board to create a strategic plan defining the overall mission, vision, values and key objectives of the Authority APCA. The strategic plan shall be ratified by the City Council and Board of County Commissioners and shall be updated at a minimum every five years. Changes to the Strategic plan shall be ratified by the City Council and Board of County Commissioners. Pursuant to the approved strategic plan the Authority Board, working with the Executive Director, shall prepare an annual work plan and budget

that specifies goals, tasks, responsible employees, timelines, and required budget for the operation of the Authority. The annual work plan and budget shall include a summary detailing progress made in the implementation of objectives set forth in the APCHA Authority's strategic plan. Following the finalization of the annual work plan by the Authority Board, the Executive Director shall meet with the City and County Managers. The Annual Work Plan shall be presented in August for the following Calendar Year and shall be the basis of the Authority's funding request to the City and County.

2. Affordable Housing Guidelines. The Executive Director shall review the Affordable Housing Guidelines when necessary, including updates and recommendations for changes that:
 - a. Identifies category qualifications for ownership and rental housing within the City and County for the population segments identified by the Authority as required by existing agreements and land use regulations.
 - b. The Authority Board shall review the Affordable Housing Guidelines, including deletions and additions, submitted to it by the Executive Director. Final approval of Guideline changes shall be made by the Authority Board. Guideline changes shall be brought forward in a resolution that shall require two readings separated by a minimum of 10 business days and a public hearing and public comment at the second reading.

3. The Authority Board. The Authority Board shall meet at least monthly to conduct its business. All meetings of the Authority shall be conducted in accordance with the Colorado Open Meetings Law, Sections 24-6-401, *et seq.*, C.R.S. and the City of Aspen Municipal Code. The Authority shall be responsible for the following duties:
 - a. To act as affordable housing advocates in all of its business by representing the views and perspectives of the larger communities of the City and County and translating those views and perspectives into concrete recommendations to the City and County; and
 - b. To review and make recommendations to the City and County with respect to the Strategic Plan, Annual Work Plan/Budget, Housing Guidelines, Affordable Housing Action Plans of the Aspen Area Community Plan, and Pitkin County Comprehensive Plans and Master Plans and advise on any other affordable housing related matters referred to it by either the City or County; and
 - c. To review specific development proposals initiated by the City or County and make recommendations thereon upon the request of either the City or County; and
 - d. To assist the City, County, and Executive Director, upon request, to define the need, planning, undertaking, construction, operation, or financing of low, lower moderate, upper moderate, middle and upper middle income housing for the population segments designated here or identified by the Authority residing in or needing to reside in the City or the County; and
 - e. To assist the City, County and Executive Director, upon request, to plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate housing projects pursuant to the Annual Work Plan; and
 - f. To assist the City, County and Executive Director, upon request, to purchase, acquire, obtain options, hold; lease (as lessor or lessee), sell, or otherwise dispose of any real

or personal property, commodity, or service from firms, corporations, the City, the County, other governmental entities or any other persons; and

- g. To assist the City, County and Executive Director, upon request, to investigate housing needs within the jurisdiction of the City or the County and the means and methods for improving those conditions; and
 - h. To review growth management policy applications (or equivalent application procedures as the same are developed or established from time to time) by developers for low, lower moderate; upper moderate, middle and upper middle income housing in the City or the County as requested by the respective Community Development Departments of the City or the County for conformance with housing needs; and
 - i. To ~~oversee enforcement~~ all aspects of the affordable housing program, including, but not necessarily limited to, the enforcement of deed restrictions (where the beneficiary is the City of Aspen, Pitkin County, and/or the AuthorityAPCHA), and the adoption of guidelines or regulations for the implementation of the Authority'sAPCHA's duties pursuant to CRS 29-1-204.5 and this IGA., and qualifications; including establishing a system to hear appeals from the interpretation or implementation of the Affordable Housing Guidelines and issue final administrative determinations on such appeals. This includes the authority to adopt a program of civil penalties to be imposed for violations of deed restrictions and APCHA'sthe Authority's guidelines or regulations, and to establish the position of a hearing officer for such purposes
4. *The Executive Director.* The Executive Director shall be responsible for the following duties in addition to any duties assigned to him or her by the City Manager:
- a. Working closely with the Authority Board and the County and City Managers to develop an Annual Work Plan and thereafter implementing said Work Plan under the supervision of the City Manager; and
 - b. Maintaining records of ~~all-existing low, lower moderate, upper moderate, middle and upper middle income~~ rental or resale deed restricted housing, including City Accessory Dwelling Units (ADUs) and County Dwelling Caretaker Units (CDUs) for the population segments designated herein or identified by the Authority and assure that such housing is used and occupied in accordance with existing City or County development approvals, contracts, or financing requirements; and
 - c. Taking all steps reasonably necessary to assure that all deed restricted units of housing comply with City and County regulations or resolutions concerning the development and administration of rental or resale restricted housing, including but not limited to administrative review of City and County land use applications as requested by the City or County Community Development department; and
 - d. Negotiating contracts as required to provide for management of deed-restricted Authority units (as that term is defined in the Affordable Housing Guidelines as such guidelines are published, modified, amended and supplemented from time to time); and
 - e. To review and recommend establishment of a computerized rental availability record system for use by the City, the County, the population segments designated herein or identified by the Authority and members of the general public; and

- f. Oversee the process for marketing and reviewing qualification of applicants for rental deed restricted or for sale affordable housing units, and for marketing, reviewing qualifications of applicants for, and arranging for transfer of title of deed restricted units; and
- g. Investigate and maintain data indicating housing needs within the jurisdiction of the City or the County for the population segments designated herein or identified by the Authority and the means and methods for improving those conditions; and
- h. To review Aspen Area Community Plan and County neighborhood and comprehensive plans and strategic initiative related to housing and recommend code changes associated with the provisions of said plans as they are modified, amended and supplemented from time to time.

IV. **BONDS, NOTES AND OTHER OBLIGATIONS:**

- A. The bonds, notes, and other obligations of the Authority shall not be the debts, liabilities, or obligations of the City or the County unless expressly assumed by the City or the County.
- B. The City and the County may provide for payment to the Authority of funds from proprietary revenues for services rendered or facilities provided by the Authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth herein, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the Authority.
- C. To carry out the purposes for which the Authority was established, the Authority is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the function, service, or facilities of the Authority or from any other available funds of the Authority. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided by law for any of the contracting parties to this Intergovernmental Agreement; except that bonds, notes, or other obligations so issued shall not constitute an indebtedness of the Authority, the City or the County within the meaning of any constitutional, home rule charter or statutory limitation or other provision unless expressly assumed by the City or the County. Each bond, note, or other obligation issued under this subsection shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the Authority pledged for the payment thereof unless expressly assumed by the City or the County and that said bond, note, or other obligation does not constitute a debt of the Authority, the City or the County or within the meaning of any constitutional, home rule charter or statutory limitations or provisions unless expressly assumed by the City or the County. Notwithstanding anything in this Section IV to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty (40) years from their respective issue dates, shall bear interest at such rates, and shall be sold at such prices at, above or below the principal amount thereof, as shall be determined by the Board.
- D. The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the Board to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the Authority. The bonds, notes and other obligations of the Authority

and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes pursuant to the Colorado Revised Statutes.

V. LEGAL ASSISTANCE:

The Authority Board may retain independent legal counsel, as needed, for day-to-day consultation and legal advice. The City Attorney shall review all contract documents that purport to legally obligate the City in any fashion. The County Attorney shall review all contract documents that purport to legally obligate the County in any fashion.

VI. DISPOSITION OF ASSETS UPON TERMINATION:

In the event of the termination of this Intergovernmental Agreement, which termination may only occur in accordance with the requirements and limitations of Section VII hereof, and the resulting dissolution of the Authority, the assets of the Authority shall be distributed as follows:

- A.* All assets acquired from contributions from the City or the County shall be returned to the contributing party if said assets are still in existence.
- B.* If assets contributed to the Authority are not in existence, the contributing party shall have the option of receiving the fair market value of the asset at the time of disposal by the Authority in either cash or assets of the Authority.
- C.* All remaining assets acquired by the Authority after the date of this Intergovernmental Agreement from funds provided by the parties shall be distributed to the parties on the basis of the appraised value of said assets at the time of termination and in the same proportion as the respective contributions of funds by the parties for acquisition of the asset.
- D.* The City and the County may agree to dispose of any assets of the Authority in any other acceptable manner.
- E.* If the City and the County cannot agree on the disposition of any assets of the Authority within sixty (60) days after termination, said assets shall be subject to an independent appraisal and shall be sold at public auction as soon as practicable with the proceeds allocated to the City and the County in the same proportion as the total contribution of funds by the respective parties for acquisition of the asset.

VII. ANNUAL RENEWAL AND TERMINATION:

The term of this Intergovernmental Agreement shall be from the effective date hereof through, _____, and shall automatically be renewed for successive one-year periods thereafter. Either party hereto may terminate this Intergovernmental Agreement for any reason upon ninety (90) days' written notice, provided, however, that this Intergovernmental Agreement may not be terminated or rescinded so long as the Authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations; provided, however, that if full payment has been provided by escrow, such termination or rescission shall not occur unless nationally recognized bond counsel has delivered an opinion to the effect that such termination or rescission, in and of itself, will not adversely affect the tax status of the interest on such escrowed obligations. Furthermore, this Intergovernmental Agreement may not be terminated if the Authority has obligations to the U.S. Department of Housing and Urban Development under any Low Rent

Public Housing Program, or other similar program, unless those obligations are assumed by the City or the County.

VIII. ASSIGNABILITY

This agreement is not assignable by either party.

VIII-IX. MODIFICATION OF THIS AGREEMENT:

This Agreement may be changed or modified only in writing by written amendment by an agreement approved by the City Council and Board of County Commissioners, acting separate and signed by authorized officers.

X. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the parties and all other promises and agreements relating to the subject of this Agreement, whether oral or written, are merged herein.

XI. SEVERABILITY:

Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.

IX-XII. NOTICES:

Any formal notice, demand or request provided for in this Intergovernmental Agreement shall be in writing and shall be deemed properly given if deposited in the United States Mail, postage prepaid to: Any notice required or permitted under this Agreement shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below and by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage prepaid to the mailing addresses set forth below. Each party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

To: City of Aspen

Aspen City Council _____

Street _____

81611

With copies to:

Aspen City Attorney c/o City Manager

130 South Galena Street 130 South Galena

Aspen, Colorado 81611 Aspen, Colorado

To: Pitkin County

Board of County Commissioners

c/o County Manager

530 East Main Street, Suite 302

Aspen, Colorado 81611

jon.peacock@pitkincounty.com

With Copies to:

Pitkin County Attorney's Office

530 E Main Street, Suite 301

Aspen, Colorado 81611

attorney@pitkincounty.com

To: Aspen/Pitkin County Housing Authority
 c/o Executive Director
 210 E. Hyman Ave., Suite 202
 Aspen, CO 81611

7. XIII. GOVERNMENT IMMUNITY: -

The parties agree and understand that both parties are relying on and do not waive, by any provisions of this Agreement, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended or otherwise available to the parties or any of their officers, agents, or employees.

8. XIV. CURRENT YEAR OBLIGATIONS.

The parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of the parties. The parties' obligations under this Agreement are subject to each individual party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision of this Agreement shall be construed or interpreted as creating a multiple fiscal year direct or indirect debt or other financial obligation of either or both parties within the meaning of any constitutional or statutory debt limitation. This Agreement shall not be construed to pledge or create a lien on any class or source of either parties' bonds or any obligations payable from any class or source of each individual party's money.

9. XV. BINDING RIGHTS AND OBLIGATIONS.

The rights and obligations of the parties under this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

XVI. AGREEMENT MADE IN COLORADO.

This Agreement shall be construed according to the laws of the State of Colorado, and venue for any action shall be in the District Court in and for Pitkin County, Colorado.

XVII. ATTORNEY FEES.

In the event that legal action is necessary to enforce any of the provisions of this Agreement, the substantially prevailing party, whether by final judgment or out of court settlement, shall recover from the other party all costs and expenses of such action or suit including reasonable attorney fees.

XVIII. NO WAIVER.

The waiver by any party to this Agreement of any term or condition of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

XIX. AUTHORITY. -

Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

The foregoing Agreement is approved by [other governmental entity] at its regular meeting held on the _____ day of _____, 2019.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement on the day and year first above written.

ATTEST:

CITY COUNCIL OF ASPEN, COLORADO

By: _____

By: _____

Linda Manning, Town Clerk

Steven Skadron, Mayor

APPROVED AS TO FORM:

By: _____ James True, City Attorney

BOARD OF COUNTY COMMISSIONERS OF COLORADO

APPROVED AS TO FORM: PITKIN COUNTY,

By: _____

By: _____

Greg Poschman, Chair

John Ely, County Attorney

Manager Approval:

By: _____

Jon Peacock, County Manager

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EXECUTIVE SESSION 10

At 5:00 p.m. Mayor Skadron called the regular meeting to order with Councilmembers Mullins, Frisch and Hauenstein present.

SPECIAL PUBLIC APPEARANCES

Griff Smith and the Baroliche exchange students. Part of the annual exchange with middle school students. 2002 was the first exchange. Since then we have hosted over 250 students and chaperons. Mr. Smith introduced the chaperons and students.

APD Presentation – Detective Sergeant Rick Magnusson said we are here to recognizing Ritchie Zah. Jeff Cheney was soliciting the best officer for 2018 and I couldn't think of anyone better than Ritchie. Jeff Cheney, district attorney, said it's not easy to be in law enforcement today. I believe the super majority of law enforcement are genuinely good people who try to help us be safe. We seek truth and justice as a goal. We wouldn't be able to do it without the hard work of law enforcement. I was happy to pick Ritchie for this award. I wanted to focus on what we do right and instituted this award for this judicial district. Over 17 law enforcement agencies. Mr. Cheney read the letter he wrote to Ritchie. Ritchie said I'm not up here today without the support of my wife and kid. Thanks to the council and police for giving me the opportunity to do this. Thanks to Don Nottingham, Adriano Minniti and Braulio. Thanks to the patrol staff for doing great work. Thanks to Rick Magnuson for always looking out for me.

CITIZEN COMMENTS

HB19-1262 funding all day kindergarten. Shirley Ritter, kids first, wanted to bring this forward and show support for this bill.

1. Jack, 3rd grader, thought it was important to make sure all students in kindergarten have a full day. It helped us a lot and we want other kids to have the same privilege. Heidi – 3rd grade, spelling is important. Sawyer, 3rd grade, full day is important because when I was in kindergarten I learned my letters. It is important to know how to use sentences.
2. Ruth Harrison said thank you Adam and Steve for serving. She talked about the leaf blower issue. Though I'm very much an environmentalist this is kind of petty. Motorcycles are louder than them. With other vehicle, snowplow and construction noise is louder it seem really petty. Thinks it needs to be overturned.
3. Cathleen Flors said she wants to acknowledge the city for the proactivity on the 5 G. She is requesting Aspen and other local agencies become more involved on the state level. Mayor Skadron said we are sensitive on this. We will make sure this works in the best interest of the community to the best of our abilities. Sara Ott, city manager, said we've worked with the north west council of governance on a letter to the FCC asking for less mandate on this.
4. Toni Kronberg said on the EOTC budget, she thanked the council for opening the door at looking at the location of the sign. Tomorrow the work session discussion is on the recruitment of the new city manager. She asked when the manager will be selected. Mayor Skadron said this council will initiate the process but the next council will make the selection. Asked about the renovations to the rec center.

CITY COUNCIL COMMENTS

Councilman Hauenstein said he attended the pow wow at the high school. It was very colorful. The overwhelming sentiment was the engagement of everyone. Ski season is officially over. It has been a great season. He thanked the Ski Co for all they do to keep the lift going. Be advised of 2 wheel vehicles out there. I appreciate the value of full time kindergarten.

Councilwoman Mullins said she is hoping we have shining mountain film festival again this year. She went to the grand opening of the new gondola at Glenwood caverns. It is great.

Councilman Frisch thanked the teachers for bringing in the kids. Hats off to Ritchie and the police force.

Mayor Skadron said thanks to the ski company and community for a great season. Ritchie and the APD, thanks for all the great work. Regarding bikes, bikes have responsibility on the street and should follow the same rules as cars. Thank you to sister cities kids, school and families that make sister cities great.

CITY MANAGER COMMENTS

City manager comments – Trish Aragon, city engineer, said we will be doing a few punch list items to the bridge starting May 13th including permanently repairing the pavement. It will be approximately 4 days. The power plant road detour will be in effect. Inbound lane will use the bridge outbound will be powerplant road. Delays will be similar to what we saw last year.

BOARD REPORTS

Councilwoman Mullins attended the Board of Health meeting. Pitkin county is looking into tobacco regulations similar to what we have in place. Emergency preparedness and EH health issues. RFTA is working on the affordable housing leases with ski co for housing for employees. Destination 2040 implementation discussion. The website is pretty clear on what is going on and priorities. We are lucky to have this agency in the valley.

Councilman Frisch attended the CORE meeting. Nordic did a great job this year.

Mayor Skadron asked about usage on the Nordic with the change to uphill. Austin Weiss, parks, said he does not have hard numbers. Because you can access the trails from so many locations it is difficult to count. Uphill has maybe turned some people on to Nordic.

CONSENT CALENDAR

Reso #44 – EOTC Budget

Councilwoman Mullins asked have we resolved the location for the sign. Dave Pesnichak said it will be on the June EOTC meeting.

- Resolution #44, Series of 2019 – EOTC 2019 Amended Budget
- Resolution #46, Series of 2019 – Appointment of Margaret Medellin as the City’s Alternate Representative to MEAN and NMPP
- Resolution #40, Series of 2019 – NWCCOG Project THOR MeetME Center Host Agreement
- Resolution #45, Series of 2019 – Amendment to rates and charges for MEAN contract
- Resolution #50, Series of 2019 – Colorado HB19-1262 Full Day funding for Kindergarten support
- Minutes – April 8, 2019

Councilwoman Mullins moved to adopt Resolution #50, Series of 2019; seconded by Councilman Hauenstein. All in favor, motion carried. Councilman Hauenstein moved to adopt the remainder of the consent calendar; seconded by Councilman Frisch. All in favor, motion carried.

ORDINANCE #8, SERIES OF 2019 – Spring Supplemental Budget

Ben Sachdeva, finance, said in total it is 71.9 million dollars. The majority is previously approved items. The remainder is carry forward projects. New requests total 1.6 million dollars. Councilwoman Mullins asked can you explain the difference between previously approved and re appropriation. Mr. Sachdeva said the large part is the city offices and the AHP housing partnership. 1A would fall in to previously approved. Reappropriation and carry forward include 7.5 Million in projects other than the AHP. Departmental savings is around 3 Million. Previously approved items include the city offices making up the bulk. Lift 1A is 4.4 Million and the CCEC refinancing bonds. Infrastructure makes up the rest. New

requests include 250,000 for the housing funds for APCA. Employee payouts is 523,000 and capital projects is the remaining.

Councilman Hauenstein asked about the difference in the city manager search fund. Ms. Ott said it includes additional outreach and reimbursement expenses. Councilman Hauenstein said the mail storm pipe replacement is another 118,000. He questions some of the expenses should have been covered under a contingency fund. Mr. Sachdeva replied there were tough conditions this winter related to heaters and pumps were needed for an additional month. Councilman Hauenstein said on the 150 fund 250,000 in buybacks. Ms. Ott said they remain in the housing program. Increased enforcement and the buying those units and flipping them requires a greater expense. It is only spent if we get to foreclosure or buyback. Councilman Hauenstein said those funds would roll back in to the 150. Ms. Ott replied it could or we could reduce a subsidy to APCA in a future year. Councilman Hauenstein said on the 451, 95,000 for a study on parking spaces in the Rio Grande. Mr. Sachdeva said I believe it is 30 spaces and it is just for design and entitlements.

Councilwoman Mullins moved to read Ordinance #8, Series of 2019; seconded by Councilman Hauenstein. All in favor, motion carried.

AN ORDINANCE APPROPRIATING AN INCREASE IN THE

- ASSET MANAGEMENT PLAN FUND EXPENDITURES OF \$33,766,033;
 - GENERAL FUND OF \$3,027,775;
 - PARKS AND OPEN SPACE FUND OF \$1,087,845;
 - WHEELER OPERA HOUSE FUND OF \$221,883;
 - HOUSING DEVELOPMENT FUND OF \$26,336,352;
 - KIDS FIRST FUND OF \$123,248;
 - STORMWATER FUND OF \$986,502;
 - WATER UTILITY FUND OF \$2,902,685;
 - ELECTRIC UTILITY FUND OF \$3,296,689;
 - GOLF COURSE FUND OF \$164,303;
 - TRUSCOTT HOUSING FUND OF \$61,878;
 - MAROLT HOUSING FUND OF \$9,550;
 - EMPLOYEE HOUSING FUND \$667,509;
 - INFORMATION TECHNOLOGY FUND OF \$412,255.

AN ORDINANCE DECREASING AN APPROPRIATION IN THE

- TRANSPORTATION FUND OF \$2,279,375;
- PARKING FUND OF \$499,156.

Councilman Frisch moved to adopt Ordinance #8, Series of 2019 on first reading; seconded by Councilwoman Mullins. Roll call vote. Councilmembers Mullins, yes; Hauenstein, yes; Frisch, yes; Mayor Skadron, yes. Motion carried.

ORDINANCE #10, SERIES OF 2019 – 119 Neale Avenue – Transferable Development Rights

Jessica Garrow, community development, said this ordinance is to remove two TDRs from 119 Neale Ave. We had the settlement agreement at a previous meeting. The agreement states the property is eligible for two TDRs. No current or future owner could sever any additional TDRs from the property. Councilman Hauenstein moved to read Ordinance #10, Series of 2019; seconded by Councilwoman Mullins. All in favor, motion carried.

ORDINANCE #10
(SERIES OF 2019)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO CREATING TWO TRANSFERABLE DEVELOPMENT RIGHTS AT THE PROPERTY LOCATED AT 119 NEALE AVENUE, LOT 1, BENEDICT CABIN SUBDIVISION, CITY AND TOWNSITE OF ASPEN, COLORADO

Councilman Hauenstein moved to adopt Ordinance #10, Series of 2019 on first reading; seconded by Councilwoman Mullins. Roll call vote. Councilmembers Frisch, yes; Mullins, yes; Hauenstein, yes; Mayor Skadron, yes. Motion carried.

ORDINANCE #11, SERIES OF 2019 – Council Salary Adjustment

Jim True, city attorney, said the proposed increased compensation would commence with the new elected officials. The ordinance proposes a small increase of \$200 a month for council and mayor. It would go into effect June 10th for upcoming council members. The last time council approved an increase was March 2001. It is also written for automatic increases in the future based on CPI. Health stipend would remain the same once it is established during any term. It is totally discretionary for council. Doing nothing would keep the compensation established in 2001. If passed, we would need a special meeting May 6th for it to take effect prior to the new council being seated.

Councilman Frisch said this has been going on in my mind for a while. My first goal was to have a discussion about this. It has been 18 years since discussed. Is there a way to get an increase on some type of indexing so it is on auto pilot. My third goal is a bit of a philosophical one. Looking at like cities there is some type of stipend compensation or a living wage if matched up to another part time job. I have no interest in offering an 80 or 90,000 salary for 20 hours a week work. I look back to what was set up in 2001 and my idea is this job tagged on to another part time job can work in to some type of living wage. My math is if we want to honor what was done in 2001 is to start council at 30,000 and mayor at 40,000. Bert talked about this a year and a half ago to make sure the community is represented. Housing isn't 100% reality or economic situation. We haven't had anyone living in Aspen serving up here in a while. We don't have anyone involved in the service industry or directly involved with a rent payment. I appreciate we are having this discussion. I do believe if we stick with the 200 dollar adjustment we are shifting away from what the community wanted in 2001 and going to a stipend. All I'm doing is hoping we have a conversation on an adjustment that will have incremental increases.

Councilwoman Mullins said I do support the automatic CPI increase and insurance stipend. What we do up here becomes more and more complicated and takes more work from the council members to be involved. It is clearly 20 plus hours per week. I think it is up to the council and the community to decide who they want on council. Do we want experts or someone learning on the job. We need to first figure out who we want up here and how to get them up here. I think it is a better mix of the community. Do you do that with 30,000 or what we get now with 20,000. There is a lot more discussion that is needed. I would support the \$200 increase, but I don't think it will change the economics for someone who needs to find a second job. It is not a half time salary. It is an important enough discussion that it should be a fully seated council. There needs to be a salary adjustment. She would like to know why the conversation was dropped in 2008. Mr. True said it was proposed to be a charter amendment automatically done to the state action for what they say county commissioners receive.

Councilman Frisch said Ann you share some of the same philosophical concerns. The reason you want to keep it a fairly small amount is you want a 5-0 vote. Bert has raised some of the same concerns about lack of representation up here. Last I heard in an email is he was against any type of adjustment. Councilwoman Mullins said it could take effect this year or in two years. Mr. True said the council members elected in March, if you do not take action by May 6th would not affect them for 4 years.

Councilman Hauenstein said I fully support a raise in pay to council. The amount of time and energy warrants a lot higher pay than what is afforded at this point. I don't think anyone up here ran for office because of the pay. It is a losing proposition. I would support more in line with the cost of living increases. I do not feel it is proper for us to make a decision. I would want a more robust discussion on

this. I agree with the possibility of increasing the pool of candidates. I think it is inappropriate for this council to make a decision that would affect a future council.

Councilman Frisch said we are not making a decision tonight, it is first reading. This has not been brought up in substance in 18 years. I've heard from a wide variety of people that they were sympathetic. I see the community falling further behind by waiting. I would suggest we keep this live and go in to a second reading. I will take any increase. We need to get the ball rolling. No one will run because of the pay but there are a lot of people who can't run because of it. Honor doesn't pay the rent or get the ski pass. It is a bit hubristic for us to stand up here and not tackle it.

Councilwoman Mullins said it merits much more discussion. I think it should be much more than 200 dollars but I would like it tied to additional education or training. What are we trying to accomplish and what else goes along with an increase.

Councilman Frisch said I doubt you would change your accountability or how much time you put in to it with the pay. I still think this job will require a part time job and it would be nice if it provided some type of part time salary.

Councilman Hauenstein said Adam, I respect your reasoning. I disagree with you on this. I would like to move that this gets tabled until after June 10th. Seconded by Councilwoman Mullins. Mr. True said a motion to table is not debatable. It could be done at any time. Councilman Hauenstein retracted his motion. Ok'd by Councilwoman Mullins.

Mayor Skadron said the roll of a councilmember is political leadership. I'm fearful that over the years we've developed a hybrid model where the political leaders have been mixing themselves in the managerial rolls. Council focuses on goals and long term projects. The expectation that the community places on the elected officials pushes council members too far into a managerial roll where they should not be involved. I think there should be a conversation as to what the roll of a councilmember is. If I consider increases to compensation it suggests to me council members will consider the path we have been on. I think there needs to be a lessening in compensation to clarify the roll between council and managerial. The community deserves to be managed by professionals. When elected officials who are ill equipped to be managers start injecting themselves into managerial rolls it is detrimental to the community.

Councilman Frisch said I think even with that reset the amount of hours needed to do the job properly and to honor deserves community representation, it is not directly linked to more money more time. I still think the time it is needed to be prepared up here and do the outreach. I'm trying to separate the hours needed even with what the charter asks for will be 20 plus hours a week. Mayor Skadron asked where does your interpretation of elected community service go. Councilman Frisch said I'm fortunate that the pay has no connection to my ability to serve up here. I know a lot of people are not in the same situation.

Councilman Hauenstein said this is the case of rational arguments on both sides. I haven't been persuaded to change my mind.

Councilwoman Mullins said I would support a much greater increase. It is a lot of time and would help get a more diverse group up here. I would like to see it happen sooner rather than later, but it calls for a really in depth conversation.

Councilman Frisch said if there is no support for Ward's motion to table this. I appreciate we start the conversation and hear from everyone. If nothing happens by the 6th it defacto gets tabled to the new council.

Councilman Hauenstein made a motion to table this. Seconded by Councilwoman Mullins. All in favor, except Councilman Frisch. Motion carried.

ORDINANCE #7, SERIES OF 2019 – Debt Issuance Approval for Purposes of Funding Construction for New Administrative Offices

Pete Strecker, finance, said Dee Weiser, bond council and Amy Canfield, underwriter, are here with us. We have had meetings during the budget and December 10th. First reading was March 11th with a work session on the 19th. We talked about alternatives, including GOP bonds and all cash. We are looking at this as a package and how to best use financing. The ordinance provides the maximum parameters. It is there to set boundaries. What you see is not exactly what it will look like. This is identical to what we used for the police department.

Councilman Hauenstein asked why is there a difference in the site lease. Dee Weiser said there is a lease from the city to the trustee to the site. Then there would be a lease purchase agreement back to the city. If the terms were equivalent in years the investor has very little time to recover its money. The rating industry likes to see the lease purchase agreement extend at least 10 years.

Mayor opened public comment.

1. Toni Kronberg said there has been no stone left unturned. COPS are up to 60 million with interest. She asked which fund will pay back the COPS. Basically we are exchanging the property for the money. She asked why we are not bringing this to a vote. Why are we not bringing this to the voters since we are exchanging the property. Mayor Skadron said as you said you are a lay person and not schooled in the legalities of this or the details of public finance. You are keying on words to try to stop the project. This is simply another attempt to derail the project. Did you complain to the county when they used COPS, you did not. Did you ever complain to the city when we used them before. This is simply an attempt by you to stall or derail the project. Toni said there is no doubt you would be listening to public comment because every discussion you have had has been in the form of work sessions. There has been no public outreach. Mr. Weiser said the reason we are using the site lease as opposed to conveying title is because of the charter. In a worst cast if the city were to default in 40 years the property would come back to the city. You still have the property. All you are giving up is the lease hold interest.

Mayor Skadron closed the public comment.

Councilwoman Mullins moved to adopt Ordinance #7, Series of 2019; seconded by Councilman Hauenstein. Roll call vote. Councilmembers Hauenstein, yes; Mullins, yes; Frisch, yes; Mayor Skadron, yes. Motion carried.

ORDINANCE #4, SERIES OF 2019 – 465 and 557 N. Mill Street Rezoning

Mike Kraemer, community development, said this is a rezoning application. The proposal is to change from SCI to MU. It is a two step process including a P&Z recommendation followed by council. Lot 1 and 2. Lot 1 is about 1 acre with an existing 20,645 square foot building. Lot 2 is .145 with 7,990 square feet. The property is located off of North Mill surrounded by the post office, grocery store, ACSD and ACES. He showed photos of the existing conditions. Approximately 21 existing businesses in these two buildings. These businesses are conforming uses in the SCI zone.

Rezoning analysis includes the purpose statement of SCI to allow for uses not found in other zones including light mechanical, industrial production, and repair. MU includes a mix of residential and commercial and provides different economies and residential opportunities from more traditional zones. Transition from CC and C1. The purpose of the two zones is not the same. MU does not exist adjacent to the subject properties and would create an island of MU. Some overlap between SCI and MU. Service uses such as laundry and dry cleaning. SCI specifically allows for manufacturing and heavy maintenance MU doesn't. MU allows for multi family, single and duplex. SCI does not. There are certain MU uses that may be more desirable and displace SCI uses. We do not have a development plan just the rezoning. There is no code that speaks to submitting a plan. In the 2018 commercial design guidelines it states certain uses may be more desirable. The 2006 civic master plan contemplates renovation of SCI space including underground parking, pedestrian linkages and affordable housing. Existing zoning is consistent

with the 2012 AACP. Encourages a balance of mixed commercial space. SCI zoning is limited in the town and a loss would be inconsistent with the AACP. There is SCI directly across from these properties. Staff recommendation is denial. 26.310.090(A) proposal does not comply. The proposed rezoning is not compatible with surrounding uses. 26.310.090(D) staff feels the rezoning is inconsistent and not compatible with community character. MU zone represents a fundamental change to the purpose and intent of SCI. It is a significant reduction in SCI land and inconsistent with the AACP. It is also inconsistent with the 2006 civic master plan. It would create non conforming uses on the property. The ordinance shows approval for the rezoning and staff is recommending denial.

Applicant

Chris Bendon, Chris Bryan and Mark Hunt.

Mr. Bendon said we are asking for the rezoning to provide parity with other SCI properties. 465 is the larger property and 557 is smaller. Other SCI areas include Andrews McFarlin, USPS, Obermeyer Place and the lumber yard. The lumber yard is 40,000 square feet of commercial. There are free market residential units. The post office is federally owned. The three comparable properties include Obermeyer at 38,000 square feet of commercial, 57,000 of free market residential and 15,000 of affordable housing. Professional office uses are allowed. Andrews McFarlin is 11,000 in commercial with 2,000 of free market residential. Professional offices are not allowed. Our property is 28,000 of commercial with no residential or professional offices. The 2016 downzoning affected this property more substantial than other properties. The surrounding area includes office, residential, non profit uses. Proposed zoning is to provide parity with other properties that allow for residential and office uses. We looked at other zones but they don't allow for a mix of uses. We also think MU is the closest to reach the ideal of the civic master plan. There are four criteria. The proposed amendments must be compatible with surrounding land uses. The Mill building is mixed use with free market and residential. North Mill station allows for retail, office and affordable housing. 414 N Mill, Andrews McFarlin, does have retail and office with free market residential. ACSD has offices and affordable housing uses. The post office is civic use. ACES is civic use. The west end neighborhood is approximate to the property with single family and duplex. Nothing in MU that is incompatible with these uses. Criteria B and C staff believes meet these standards. They deal with demands on public facilities and natural environment. Criteria D talks about if the amendment is consistent with community character and intent of the title. What is community character and the public interest. We believe there is a public interest for allowing more MU development. Smaller building sizes is less potential for environmental impacts. Shift between 2 zones that allow for commercial use. The river approach area provides direction of architectural style. MU uses are compatible with community character. We believe you can make a positive finding on this criteria. The status quo is not necessarily working and sustaining businesses in a long term way. It is not promoting viability. P&Z vote was against the proposal at 5 to 1 for denial. There was some intrigue in the redevelopment of this property. We would not get through the time and expense to put forth a fully baked development application without some idea of community vision for this property.

Mark Hunt, owner, said this is not my style. The lawsuit came with the property. I chose to keep the lawsuit to know what I was getting. I wanted to make sure I could keep at least what was in place without it getting any worse. I love this property and think it has a ton of opportunity. I believe the uses that are there, it would be important to incorporate them in to something. It is a process. What happens in 2016 was a bit unfair. I think the city felt the same way. A week after I closed I was approached by the city to buy the property.

Mayor opened the public comment.

1. Steve C. said the voice that is getting lost is the local businesses that are there now. They would not survive a rezoning. That is the biggest impact on the community. Its not the prettiest building but it is functional.
2. Toni Kronberg said what is the best and highest use for that property. Many of the same businesses would be allowed. You could add conditions to the rezone. All of the businesses in Obermeyer found homes. I think a rezone gives aspen more opportunities.

3. Scott Kendrick said the viability of the investment is not what this is all about. If it is redeveloped the rent will go up and it will be harder to get back in there. Obermeyer is not necessary an example of a successful development. If the zoning is changed the only benefit would be to the developers. Once it is done it is done and we will never get SCI back.

Mayor Skadron closed the public comment.

Mr. Hunt said this vote isn't saving these businesses. We could give notice and empty the building tomorrow. I respect the fact they said that. There are locals and businesses there. The responsibility would be on us to when we did something with the property to find temporary space for them. Toni brought up an interesting idea with setting conditions. We could do something to subsidize the businesses we are trying to save.

Councilwoman Mullins said for a long time we have had discussions about how important the SCI zone is. I supported that. We have very few areas that are SCI. I agree with most of what staff has said in terms of the problems that changing the zoning would create. I don't see any compelling reason to change the zoning. I can't support changing the zoning.

Councilman Frisch said while I understood the legal process the former owner took. It takes a lot of gumption to show up here while you are suing us to ask for an upzoning. I've been pushing for a long time that this zoning is not serving the best interest for the community. If you widen the zoning uses to get 21st century uses in there with what is there now. The pickle we have been having is widening the uses will increase the rent profile and could put pressure on some of the uses there. I suggested the city should purchase this property. I think there are all sorts of interesting options there. I think this is the most important piece of property left to be developed. I think we need to be very protective of that and keep the zoning in place. I'm not sure the zoning can't be changed without a plan, but I think there should be a serious discussion about what types of uses should go there. It is too early to get rezoned.

Councilman Hauenstein said the one thing that is know is change is inevitable. I'm sure what you come up with will gain traction.

Mayor Skadron said I don't disagree with reconsidering the status quo. I concur with council and support staff recommendation.

Mr. Bendon said it is an important property. There are opportunities there that have a better opportunity to serve community interest. The status quo won't last forever. Denial of the ordinance does not protect the businesses that are there. Uses allowed by right don't fall within community interest. We could build the largest sewing machine repair shop in the county. We could build a huge marijuana grow. While lucrative, it doesn't promote any community interest. We think there is an interest in having more of a visioning discussion about what this property could be. There is an opportunity to do that and we are ready to do that. It is not a simple conversation but one we are willing to engage in. We think there is an opportunity to have a visioning discussion up front.

Councilman Hauenstein said I'm open to those discussions and community engagement.

Mr. Hunt said I inherited the lawsuit. I'm asking for a downzone. It is probably the most aggressive zoning in town. You can build lot line to lot line up to 35 feet tall. From bulk and mass, it is the largest on the books for commercial. I don't want to do that and it is not my intent. I kept the lawsuit alive to protect the underlying uses.

Councilman Frisch said that all sounds great. There are some existing uses that make sense from the beginning and some that don't belong. There would be a lot of time wasted to keep showing up here asking what you think. I'm looking forward to the process.

Mr. Bendon said I want it to be clear the litigation was a last resort. The previous owner and current owner made it clear the last thing they want is a knock down legal fight. Mark does not savor the idea of litigation. It is there because it is a legal right and last resort. We really do want to have a constructive dialogue about this property. It is a piece of property that needs a lot of attention. Right now the status

quo is not satisfying it. We believe the 2016 amendments were a mistake. We need to come back as a community. We hope the new council is able to have this conversation.

Councilman Frisch moved to deny Ordinance #4, Series of 2019; seconded by Councilwoman Mullins. Roll call vote. Councilmembers Mullins, yes; Frisch, yes; Hauenstein, yes; Mayor Skadron, yes. Motion carried.

RESOLUTION #49, SERIES OF 2019 -1010 N. 3rd St. – Greenwald Pavilion – Temporary Use

The Aspen Institute is requesting to allow an additional 34 days of the tent. The 2004 ordinance granted approval for the pavilion. The tent is up from the last Monday in June to the 4th Sunday in August. This request is to enable an early erection of the pavilion on May 14th. There is an event on May 19th. No other events are requested. Staff recommends in favor. This is just for 2019.

Mayor Skadron opened the public comment. There was none. Mayor Skadron closed the public comment.

Councilman Frisch said there may be some benefit to having the tent up longer permanently. Ms. Garrow replied having it up longer every year would be a different land use process.

Councilman Hauenstein moved to adopt Resolution #49, Series of 2019; seconded by Councilwoman Mullins. All in favor, motion carried.

EXECUTIVE SESSION

Mr. True recommend council go in to executive session pursuant to C.R.S.24-6-402 (b) Conferences with attorney for the purpose of receiving legal advice regarding the Angie Callan case.

At 8:50 pm Councilman Frisch moved to go in to executive sessions; seconded by Councilwoman Mullins. All in favor, motion carried. At 9:15 pm Councilman Hauenstein moved to come out of executive session; seconded by Councilman Frisch. All in favor, motion carried. Councilman Frisch moved to adjourn; seconded by Councilwoman Mullins. All in favor, motion carried.

Linda Manning
City Clerk

RESOLUTION #53, SERIES OF 2019 – Authorization for City Manager to spend contingency dollars for
Project 51112; utility work for 420 Rio Grande 2

At 4:00 PM Mayor Skadron called the special meeting to order with Councilmembers Hauenstein, Mullins and Frisch present.

RESOLUTION #53, SERIES OF 2019 – Authorization for City Manager to spend contingency dollars for Project 51112; utility work for 420 Rio Grande

Jeff Pendarvis, asset, said the project as you know is utility work in Rio Grande. It is proceeding. As excavation proceeded for deep utilities, engineers noticed some issues with the soil in the field. Their recommendation is to over excavate for the roadway. Mayor Skadron asked is this unusual. Mr. Pendarvis said the issue has accumulated over time. It was the old rail yard with various different uses. This is unforeseen and unexpected because the road was in pretty good shape. The engineers feel it is prudent to replace. Sara Ott, city manager, said the option is to do it now or later. We felt now was worthwhile since the hole was already opened.

Councilwoman Mullins asked will the excavation be deeper than it would have been. Rob Schober, asset, replied two feet deeper for the road itself. Councilman Hauenstein said this is not Mill Street, just the parking area. Mr. Schober replied Mill to Founders Place.

Councilman Hauenstein said this disturbs me it is a \$379,000 no bid contract. You are saying it should be done immediately. 20,000 for a smooth drum, two line items for 12,000 and a pilot car. What do we need a pilot car for. This doesn't sit well with me when I look at the detail. What does the owners rep say. Mr. Pendarvis said there will be continued vetting. Shaw provided us with the change order today. We are meeting today because the time sensitivity. Councilman Hauenstein asked what kind of assurances do I have when we are paying for a pilot car. Ms. Ott replied the equipment moving in and out is wider than usual. The pilot car is to move the equipment in and out. These are not unusual charges. This is a maximum expense. We have the opportunity to continue to value engineer this. If we want the road open for food & wine we need to address this this week. Councilman Hauenstein said I have a problem with the 379,000 no bid contract. Councilman Frisch asked what do you propose we do right now. Councilman Hauenstein replied I'm doing my own vetting right now. Ms. Ott said the alternative would be to fill the hole right now and in the 2020 budget we rebid. The site is controlled under one contractor. This would be the normal course of business to use this contractor. The difference is the contractor is on site now. Councilman Hauenstein asked how long has the area been used without degradation to the road base. Mr. Pendarvis replied I know if we don't proceed it is day to day delay and we are up against food & wine. Mr. Schober replied typically the cost is for hauling. We will pay per haul ticket. It may be less. Councilman Hauenstein said if we chose not to do this we save 379,000 and put the road base back to what it was. In my 40 years plus there has not been a degradation to it. Mr. Pendarvis said the engineer said since we will be using the road for our construction with heavy loads that is when you might start to see a problem.

Councilwoman Mullins asked why is traffic control not included. Mr. Pendarvis replied it is already in place. Councilwoman Mullins said when you did soil tests you didn't find out about this. Mr. Pendarvis said the samples were limited to the site not the right of way and did not expose this issue.

Councilwoman Mullins asked is it coming out of the contingency. Is there the possibility to share with another fund. Ms. Ott replied if approved we will bring an appropriation to come out of the asset fund in the second reading of the supplemental.

Councilman Hauenstein said I have to express my displeasure not having the owners rep here. I find that to be unacceptable. Ms. Ott said I met with him yesterday on it. Mr. Pendarvis replied he is unable to attend the meeting today but we have been in contact with him constantly. Councilman Hauenstein said this is a separate contract that does not get tagged as added costs. Ms. Ott said when you opened the hole for utility lines we disturbed the road base sufficient enough with the utility repair. I suspect we will start seeing pavement failure more quickly with a patch. It is not a great situation and I did not feel I had the authority to address it myself which is why we came here. Councilman Hauenstein asked why did this not surface when the utility work was done for the county offices. Mr. Pendarvis said they did not do work in our right of way. There is no direct correlation between their building and this site. Ms. Ott said the age of the utility lines is in excess of 40 years. Mr. Pendarvis said we found old conduit and rail ties. There was a mix of other materials. It is not standard today. Councilwoman Mullins asked you never ran

in to this with the Mill Street construction. Mr. Pendarvis said I did not hear from them that they found a similar condition. We did confer with the streets department. I understand your concern about the cost but want to assure you we will vet it fully. Councilman Hauenstein asked does Stutzman Gerbaz see this as maximums. Mr. Pendarvis stated we spoke with them and I am confident we can work out with them and Shaw costs not to exceed. I did ask the project manager if there were other risks. They assured me there was nothing they saw in the next three weeks.

Councilwoman Mullins said I support going ahead because it will be more money if we do it again later. The lessoned learned should have been from when they did Mill Street and found unexpected conditions. Mayor Skadron said it is not the case that departments did not communicate it is an unusual condition. Can council have confidence since this came to us as a non competitive bid in the accuracy of the number. Ms. Ott replied we will continue to vet it. We felt it was reasonable to ask for this maximum amount. These hourly rates are not out of the norm from other contracts I have signed for the city. The question is the quantity number and we will continue to vet it.

Councilman Hauenstein moved to adopt Resolution #53, Series of 2019; seconded by Councilman Frisch. All in favor, motion carried.

Councilwoman Mullins moved to adjourn at 4:25 pm; seconded by Councilman Hauenstein. All in favor, motion carried.

Linda Manning
City Clerk



CITY OF ASPEN
MEMORANDUM

TO: Mayor Skadron and Aspen City Council

FROM: Amy Simon, Historic Preservation Officer

THRU: Jessica Garrow, Community Development Director

RE: Notice of HPC approval for Conceptual Major Development Review, Relocation and Setback Variations at **105 E. Hallam Street**

MEETING DATE: May 13, 2019

APPLICANT /OWNER:
105 E. Hallam LLC

REPRESENTATIVE:
Z Group Architects

LOCATION:
Street Address:
105 E. Hallam Street

Legal Description:
The east 25.14' of Lot B and the West 8' of Lot C, Block 65, City and Townsite of Aspen

Parcel Identification Number:
PID# 2735-124-37-002

CURRENT ZONING & USE
Single-family home,
R-6: Medium-Density Residential

PROPOSED LAND USE:
No change

SUMMARY: On April 10th, the Historic Preservation Commission Conceptually approved a project which involves removing a non-historic addition from this Victorian era home, lifting the home and shifting it forward to construct a basement, and developing a new addition. Setback variations were requested and accepted by HPC. The project does not include a floor area bonus, and is under the maximum allowed square footage by 500 square feet.



STAFF RECOMMENDATION:

Staff recommended approval of the project with conditions, and HPC agreed by a vote of 4-2, with the two dissenting votes related to a difference of opinion regarding the forward relocation of the house and the roof form of the addition. Staff recommends Council uphold HPC's decision.

PROCEDURE: Call Up notice is not a public hearing. City Council has the option of exercising the Call Up provisions outlined in Section 26.412.040(B) of the Municipal Code within 15 days of notification. If City Council does not exercise the Call Up provision, the HPC Resolution shall stand.

ATTACHMENTS:

- Exhibit A: HPC memo, April 10, 2019
- Exhibit B: Approved plans
- Exhibit C: Draft HPC minutes, April 10, 2019
- Exhibit D: HPC Resolution #6, Series of 2019



CITY OF ASPEN
MEMORANDUM

TO: Aspen Historic Preservation Commission

FROM: Amy Simon, Historic Preservation Officer

MEETING DATE: April 10, 2019

RE: **105 E. Hallam** - Conceptual Major Development Review, Relocation, Setback Variations, PUBLIC HEARING CONTINUED FROM FEBRUARY 27TH

APPLICANT /OWNER:

105 E. Hallam LLC

REPRESENTATIVE:

Z Group Architects

LOCATION:

Street Address:

105 E. Hallam Street

Legal Description:

The east 25.14' of Lot B and the West 8' of Lot C, Block 65, City and Townsite of Aspen

Parcel Identification Number:

PID# 2735-124-37-002

CURRENT ZONING & USE

Single-family home,
R-6: Medium-Density Residential

PROPOSED LAND USE:

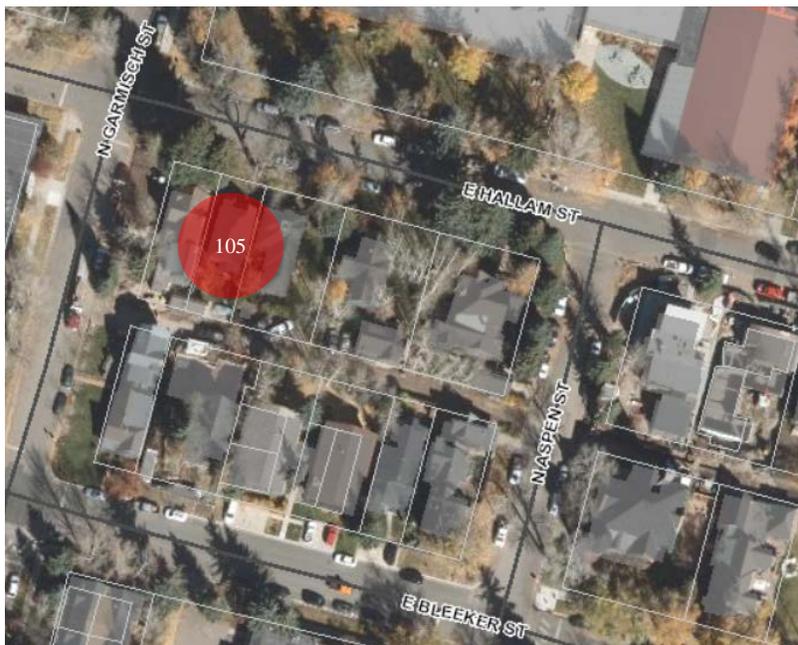
No change

SUMMARY:

The applicant has requested a Major Development, Relocation and Variation review for a project which involves removing a non-historic addition from this Victorian era home, lifting the home and shifting it forward as part of basement construction, and development of a new addition.

STAFF RECOMMENDATION:

HPC reviewed this project on February 27th and continued for restudy, particularly of the addition. Staff finds that the applicant has addressed the board's direction and recommends approval with conditions.



Site Locator Map - 105 E. Hallam Street

BACKGROUND:

105 E. Hallam is a 3,314 sq. ft. lot located in the R-6 zone district. On the site is a brick home built in 1885, and a brick shed which straddles the property line with the home to the west. This home was built for Catherine Brown (née Cowenhoven), who was married to D.R.C. Brown. Both families were significant in Aspen’s mining development.

105 E. Hallam and 101 E. Hallam, to the west, were originally mirror images of each other, however, a new second floor was added on 101 E. Hallam decades ago, so that the two buildings are no longer a pair.

105 E. Hallam is on a blockface which is all 19th century homes of varying styles and setbacks.



REQUEST OF HISTORIC PRESERVATION COMMISSION (HPC)

The Applicant is requesting the following land use approvals:

- Major Development (Section 26.415.070.D) for removal of a small non-historic addition and construction of a new addition to the rear of the historic home.
- Relocation (Section 26.415.090.C) to move the historic home forward 5 feet.
- Setback Variations (Section 26.415.110.C) for setback variations related to historic and proposed new conditions.

The Historic Preservation Commission (HPC) is the final review authority, however this project is subject to Call-up Notice to City Council.

STAFF COMMENTS:

Staff finds that the proposal meets the Historic Preservation Design Guidelines, though compliance with some guidelines needs to be ensured with conditions to be addressed at Final. Please note that this project does not include a request for a floor area bonus, and is in fact below the allowed floor area by approximately 500 square feet. Also, while the application mentions the need for a parking reduction, this is not required. The site has no parking now. The proposed single stall garage is an improvement and adequate for compliance with the zone district.

Following is a summary of staff findings.



Site Planning, Relocation, Setback Variations: The applicant proposes to lift the historic house on this site, move it 5’ forward, and place it on a new basement that exceeds the footprint of the above grade development. A historic shed along the alley will remain where it is. Limited improvements are proposed for the yards surrounding the resources.

Staff is supportive of the proposed site planning, relocation and setback variations. Criteria are detailed in Exhibits A, B and C to this memo.

Staff finds that, given the fact that the property contains two historic resources, a house and an outbuilding, allowing the house to move forward on the lot facilitates a connector as part of the addition, and creates adequate distance between the new construction and shed. The applicant has slightly increased the length of the connector since the previous hearing, so that now it is a full 10,’ as called for in the design guidelines.

For this meeting, the applicant has also provided more details on the relocation plan, which was of particular concern to HPC since this is a masonry, rather than a frame building, which is more typical of the miner’s cottages in Aspen. Staff is satisfied with the description of the move provided for the packet by Bailey Housemovers. The applicant will be required to provide a financial security of \$30,000 until the house is set on the new foundation.

The application mentions a proposal to cover any new exposed foundation below the historic house with brick. Staff does not support adding any additional courses of brick. New construction should be clearly new. Any foundation that is visible should be limited and should either be exposed concrete or metal flashing. The drawings appear to be consistent with this preference, and the drawings indicate that there will be one front step leading into the historic house. Currently the brick walls meet grade and there is a minimal step on to the front porch. Staff finds that the application maintains a reasonable relationship to the existing conditions.

At the previous hearing, staff requested restudy of the lightwell at the northeast corner of the historic house, so that it is more recessed from the front façade due to potential visual impact. The lightwell has been redesigned since the February submittal so that it is 18” further from the front of the house, for a total setback of just less than 3.’ Staff finds this is an acceptable gesture to allow lawn to fully meet the front corner of the house. The applicant is required to carefully design all of the lightwells so that the exposure of the curb of the lightwell above grade is the minimum necessary.

The proposed project includes requests for the following setback variations:

- A 5’ reduction of the front yard setback for the basement only
- A 5’ reduction of the rear yard setback for the basement and for the second floor of the addition
- A 4” reduction of the west sideyard for the historic house
- A 4” reduction of the combined sideyard requirement
- The historic shed is to remain in place with existing encroachments in the rear and west yards.



Staff finds that the review criteria are met for the requested setback variations because the variations maintain the siting of the historic resources and/or allow the new construction to be maximized below grade and to the rear of the historic house. Adequate buffer to the historic shed is also achieved.

Historic Landmark -Alterations: The applicant proposes no alterations directly to the historic resource. More detail will be discussed at Final review.

New Addition - Connecting Element & Form/Materials/Fenestration: Criteria for design review and a full list of the relevant design standards are provided in Exhibit A to this memo.

Since the last meeting, the applicant has restudied the proposed addition to reduce scale and also improve the compatibility between the addition and historic house in terms of relating better to the form of the original house. As shown below, the gable end of the addition now features a pitch identical to the front of the historic home, and the plate height on this gable has been reduced. An east facing dormer that was shown in February has been eliminated, simplifying the roof plan, and a shed roof on the west side of the addition now sits further below the gable ridge than previously shown. Staff finds that all of these adjustments have improved the project. The architect is indicating that wood siding will be primary material on the addition, in keeping with wood elements on the Victorian. Fenestration patterns will vary from the size and placement of windows on the resource.



February 27th

3 NORTH ELEVATION
A4.0 1/4" = 1"



April 10th

NORTH ELEVATION



Before Final Review, a number of items require clarification by the architect.

The Building Department has brought up the need to fire rate the historic structures and eaves within a certain proximity of property lines. The applicant must confirm this is possible without inappropriate exterior alterations to the historic resources.

The applicant must also confirm that the extension of the basement towards the front lot line can be accomplished within the Park's Departments requirements to protect the large cottonwood tree at the front of the site. Staff also requests that the applicant verify that sod can be planted on top of this basement area. The house has historically been surrounded by grass.

For HPC's information, some aspects of the project brought up at the February hearing have been resolved by other City Departments. Engineering will defer the requirement for a public sidewalk in front of the property due to negative impacts on historic street trees. Engineering is also working with the applicant for off-site stormwater system improvements, so that no drywell or other on-site treatment features will be part of the project. Updated referral comments are provided below.

Staff finds that the amendments submitted for this meeting address concerns expressed at the previous hearing and bring the project into compliance with HPC guidelines.

REFERRAL COMMENTS:

The application was referred out to other City departments to preliminarily identify requirements that may affect permit review. The following is a summary of comments received. Some have been updated since the February 27th hearing. Applicant follow-up on these comments is needed leading up to building permit submittal.

Building:

1. The Building Department has identified the need to achieve a 1 hour Fire Rating on walls of the historic house and shed which are less than 5' from the adjacent property line. Any eaves which are closer than 3' to a property line will also have to be fire rated.

UPDATED Engineering:

1. Engineering initially commented that a public sidewalk is required to be built in the right-of-way abutting Hallam. This neighborhood is a priority for sidewalk installation, particularly because of the heavier traffic in the area and the presence of the Red and Yellow Brick Schools. After further evaluation with the Parks Department, it has been determined that with the large Cottonwood trees and adjacent property's Spruce, a sidewalk is not feasible at this time. The Engineering Department will require a sidewalk, curb and gutter agreement be submitted during building permit.



2. Coordinate sidewalk and utility placement (including a new water service line) with Engineering and Parks to protect the street trees in front of the property. A location for the new line, connecting to the house to the west of the front door, has been preliminarily approved.
3. A site visit between the architect, Engineering and Parks has led to a preliminary agreement that stormwater mitigation will be satisfied off-site, with the applicant paying the costs to upgrade a stormwater inlet in the adjacent right-of-way to a treatment system.
4. Demonstrate how micropile walls for the extended basement can be constructed without damage to the roots of adjacent trees.
5. Demonstrate that the neighboring transformer proposed to serve this property has capacity. Otherwise this project will require an on-site transformer.

UPDATED Parks:

1. No excavation will be permitted any closer than 10' from the trunk of the street trees. This includes the micropile cap.
2. Tree dripline irrigation will be required throughout construction.
3. Construction access must be coordinated with Parks and may only be allowed from the alley.
1. Air-spading will be required to limit impacts to trees. Parks will meet with whoever will be air spading to mark this disturbance line in the field. This air spading will run from east property line west for 20', 10' from trunk of tree line.
2. 6' tree protection fencing will be required at this final location for cottonwood (in co-ordination with construction fencing).
3. 6' tree protection fencing along both sides of house will be installed at 3 feet from wall of house and a 6" mulch bed will be required along this path.
4. The front walkway to the house must be a floating sidewalk with minimal excavation for any snowmelt, to be coordinated with Parks.

Zoning:

1. Setback variations will be needed on the west for the house, on the rear for the shed, as well as for the basement and the upper level of the house.

RECOMMENDATION:

Staff recommends the Historic Preservation Commission grant Conceptual, Relocation and Variation approval with the following conditions:

1. At Final review, confirm how the historic structures and eaves will be fire rated where they are within 5' or less of property lines.
2. At Final review, confirm that the extension of the basement towards the front lot line can be accomplished within the Park's Departments requirements to protect the large cottonwood tree at the front of the site.
3. At Final review, verify that sod can be planted on top of the basement which is forward of the house.



4. At Final review, confirm that any new foundation that is visible below the historic structure will be exposed concrete or metal flashing. Confirm that the exposed curb of all lightwells will be the minimum necessary.
5. As part of the approval to relocate the house on the site, the applicant will be required to provide a financial security of \$30,000 until the house is set on the new foundation. The financial security is to be provided with the building permit application.
6. The following variations are accepted:
 - A 5' reduction of the front yard setback for the basement only
 - A 5' reduction of the rear yard setback for the basement and for the second floor of the addition
 - A 4" reduction of the west sideyard for the historic house
 - A 4" reduction of the combined sideyard requirement
 - The historic shed is to remain in place with existing encroachments in the rear and west yards.
7. A development application for a Final Development Plan shall be submitted within one (1) year of the date of approval of a Conceptual Development Plan. Failure to file such an application within this time period shall render null and void the approval of the Conceptual Development Plan. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a Conceptual Development Plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

ATTACHMENTS:

Resolution # __, Series of 2019

Exhibit A - Historic Preservation Design Guidelines Criteria /Staff Findings

Exhibit B - Relocation Criteria/Staff Findings

Exhibit C - Setback Variation Criteria/Staff Findings

Exhibit D - Application

Exhibit B

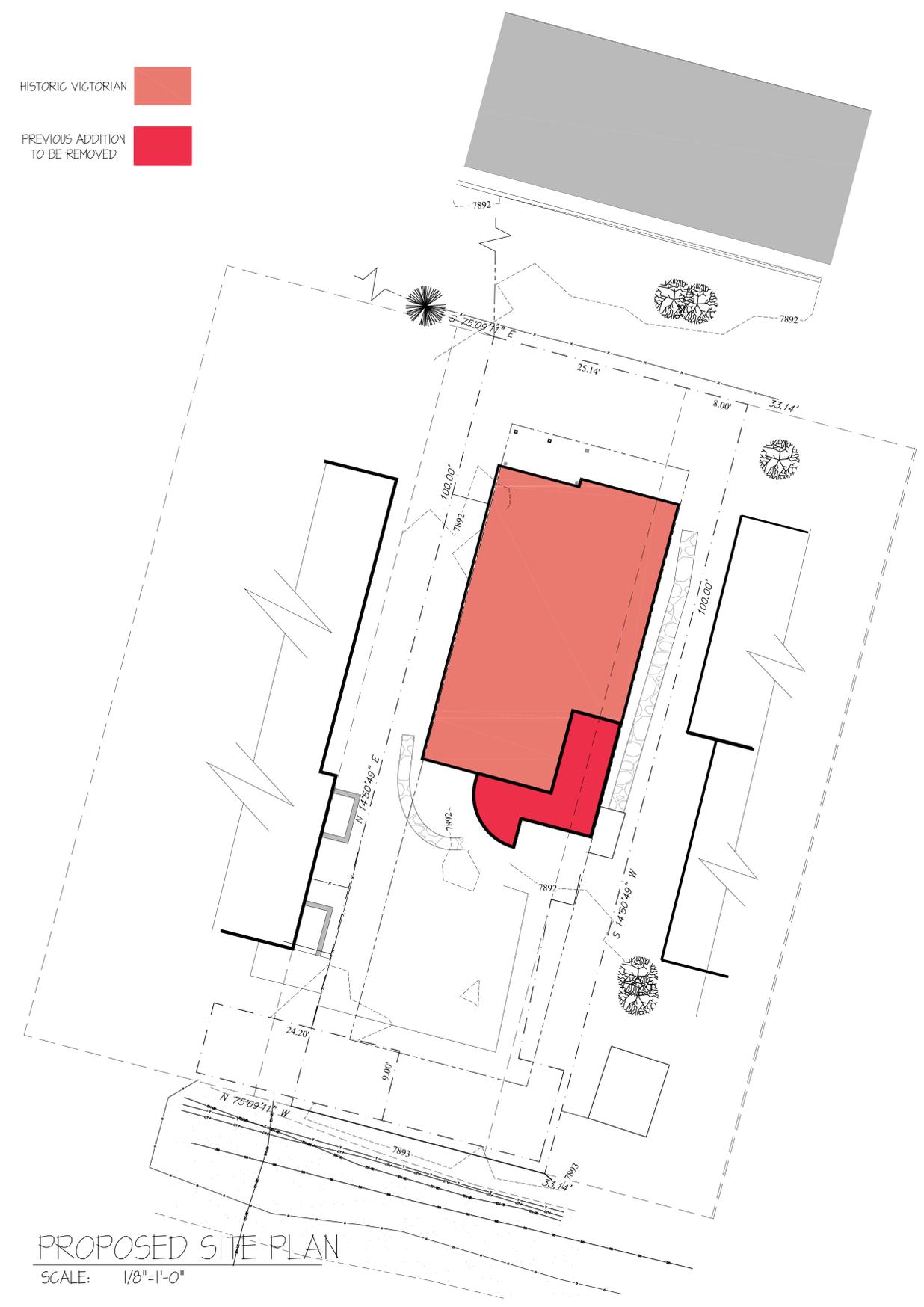
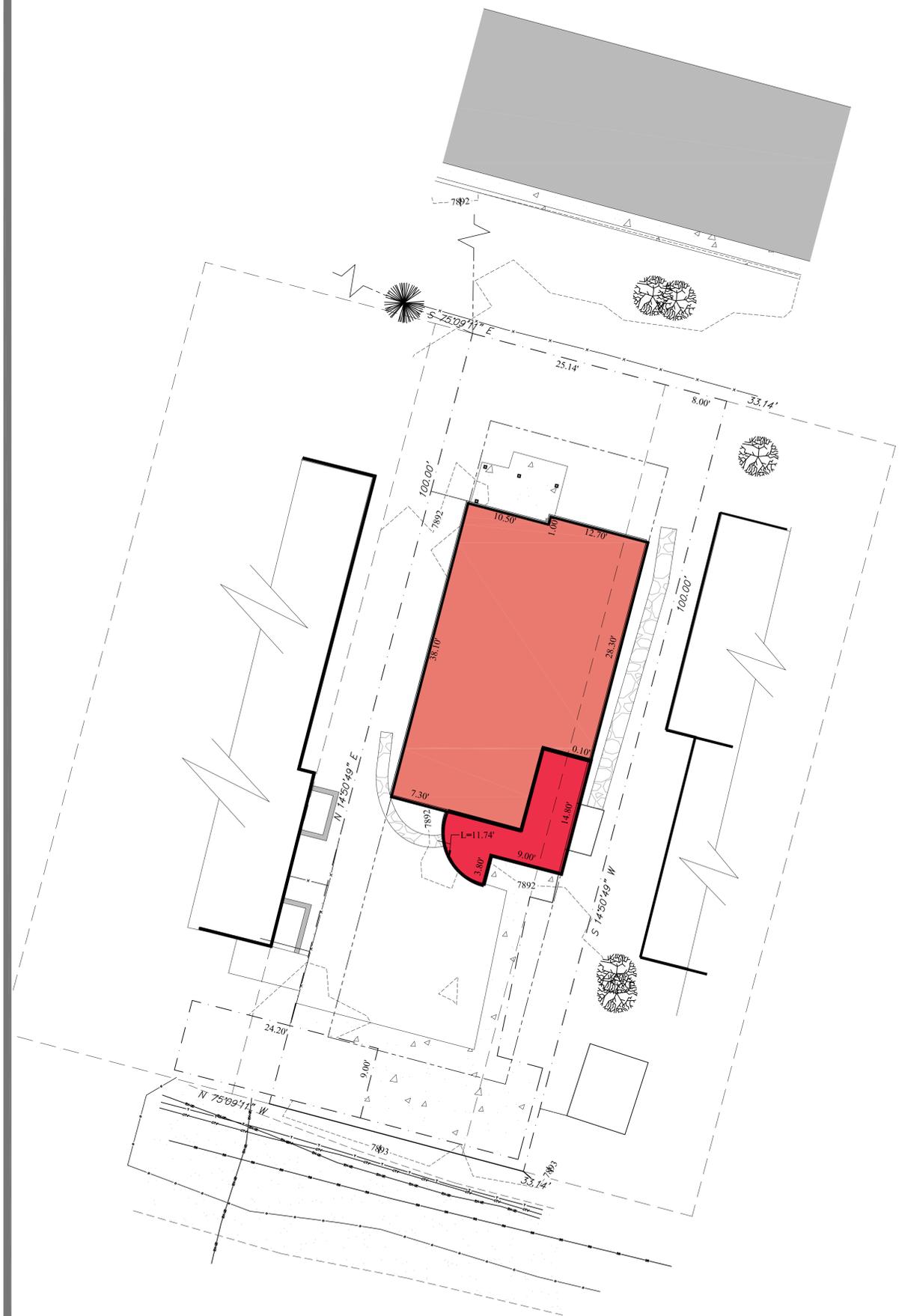


105 EAST HALLAM

ASPEN, COLORADO

354

HISTORIC VICTORIAN
 PREVIOUS ADDITION TO BE REMOVED



Seal:

#	DATE	ISSUED FOR

Construction Issue Date:
 Drawing Title:

FLOOR PLANS

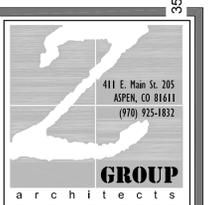
Sheet #:

AI.I

- EXISTING HISTORIC STRUCTURE
- PROPOSED ADDITION



PROPOSED SITE PLAN
SCALE: 3/16"=1'-0"



105 EAST HALLAM

ASPEN, COLORADO

Seal:

#	DATE	ISSUED FOR

Construction Issue Date:
Drawing Title:

SITE PLAN

Sheet #:

AI.0

Seal:

DATE ISSUED FOR

#	DATE	ISSUED FOR

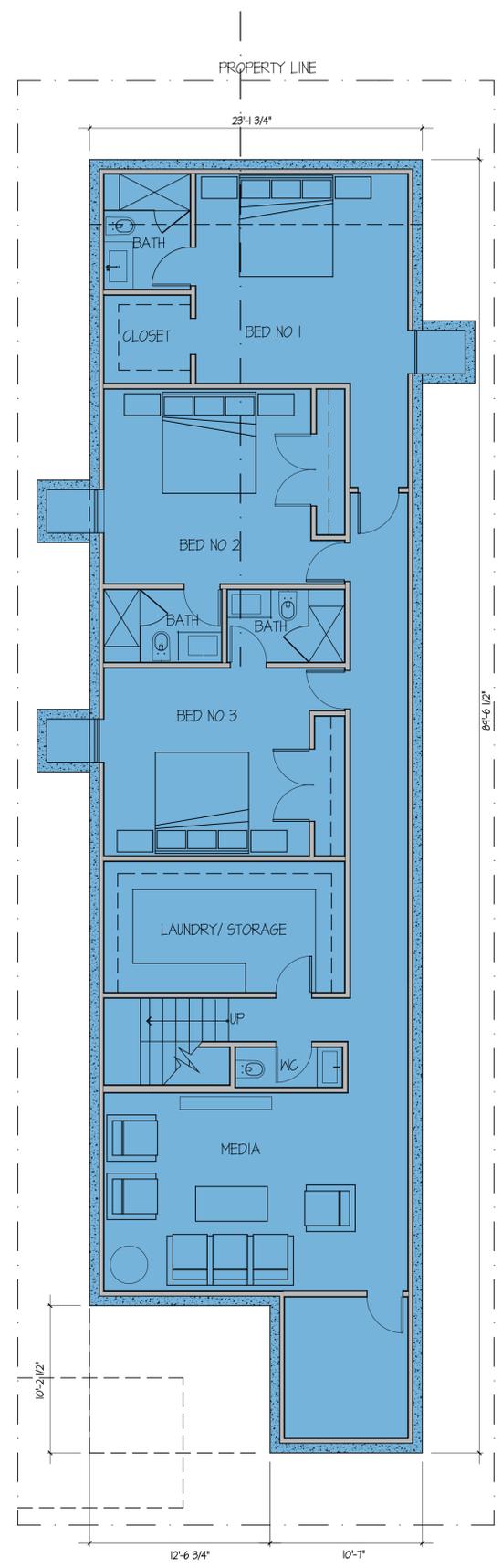
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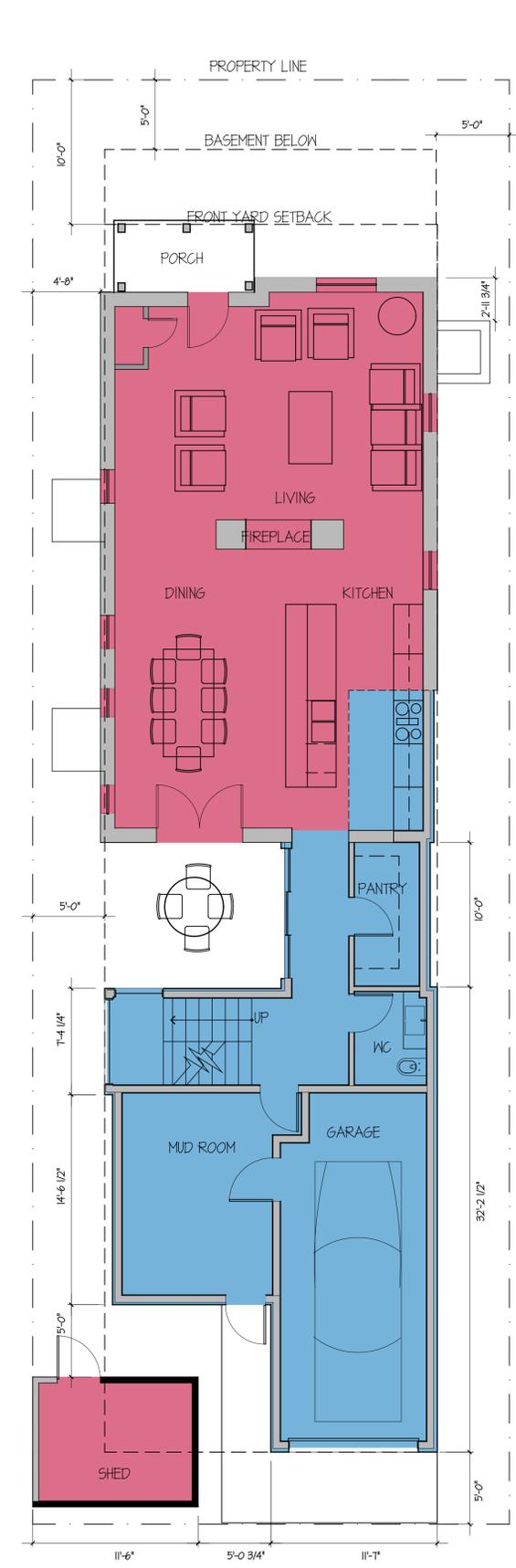
FLOOR PLANS

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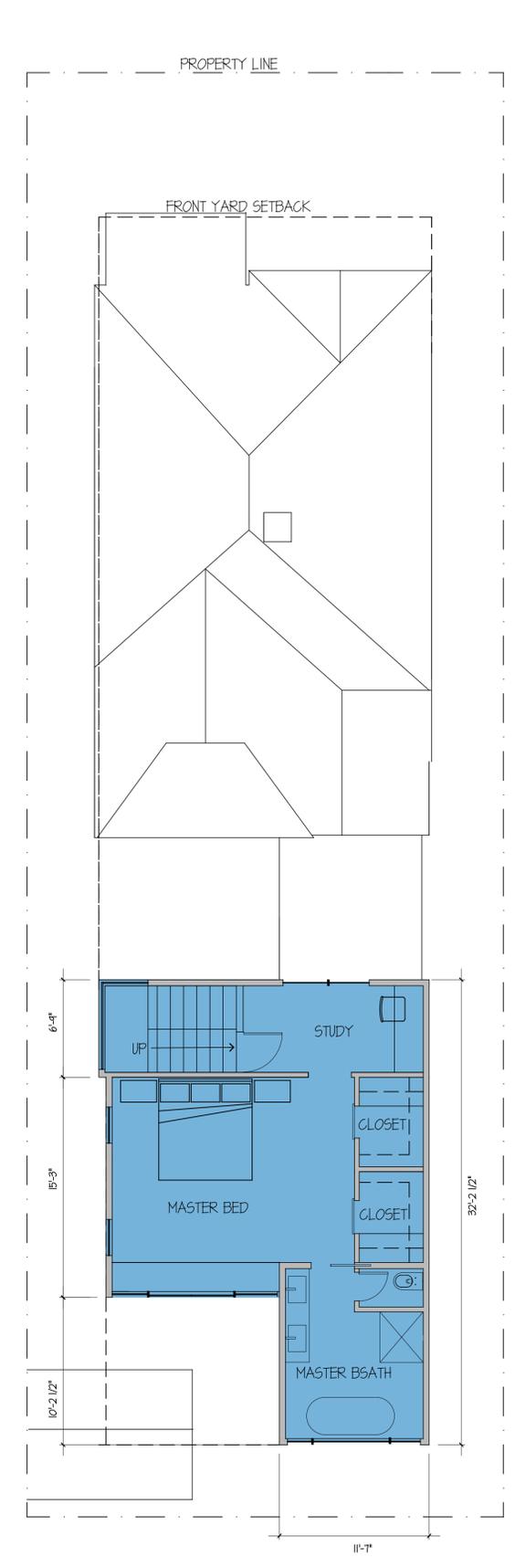
A2.0



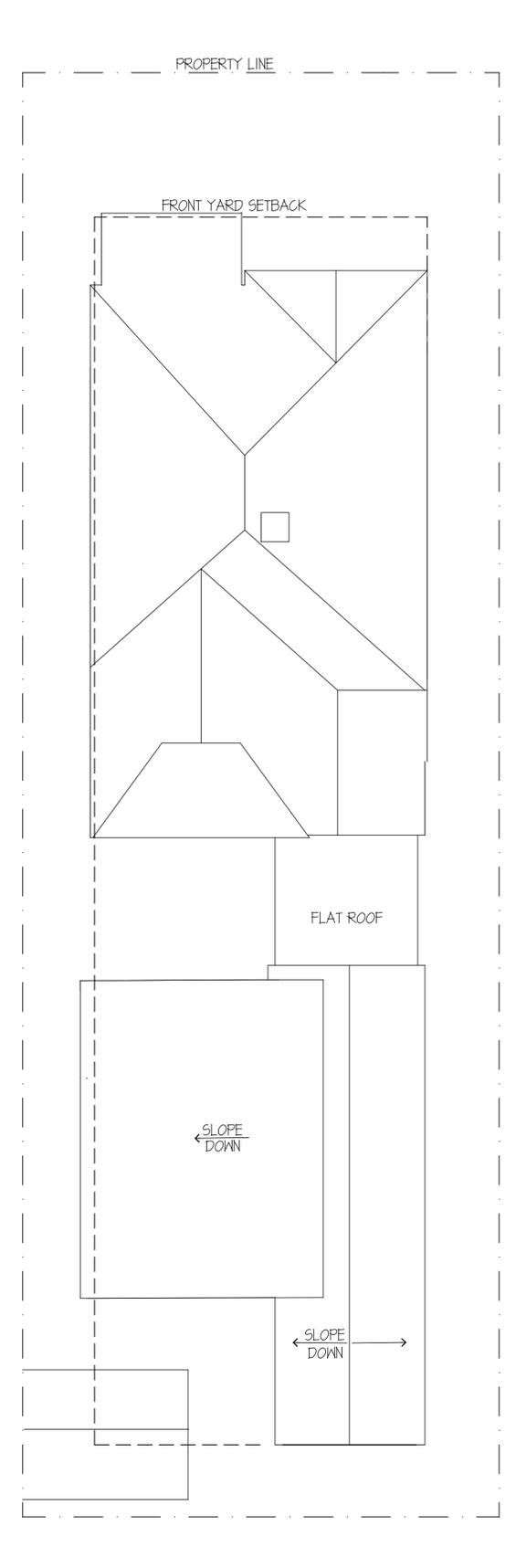
BASEMENT FLOOR PLAN
 SCALE: 3/16"=1'-0"



GROUND FLOOR PLAN
 SCALE: 3/16"=1'-0"



SECOND FLOOR PLAN
 SCALE: 3/16"=1'-0"



ROOF PLAN
 SCALE: 3/16"=1'-0"

105 EAST HALLAM

ASPEN, COLORADO



Seal:

#	DATE	ISSUED FOR

Construction Issue Date:

Drawing Title:

**EXISTING CONDITIONS
 IMAGERY**

Sheet #:

A3.2



HALLAM STREET ELEVATION



HALLAM STREET ELEVATION



HALLAM STREE ELEVATION



WEST SIDE VIEW



VIEW FROM ALLEY EAST SIDE



VIEW FROM ALLEY WEST SIDE

Seal:

#	DATE	ISSUED FOR

Construction
 Issue Date:

Drawing Title:
ELEVATIONS

Sheet #:

A3.1



6 EXISTING EAST ELEVATION
 A4.0 1/4" = 1'



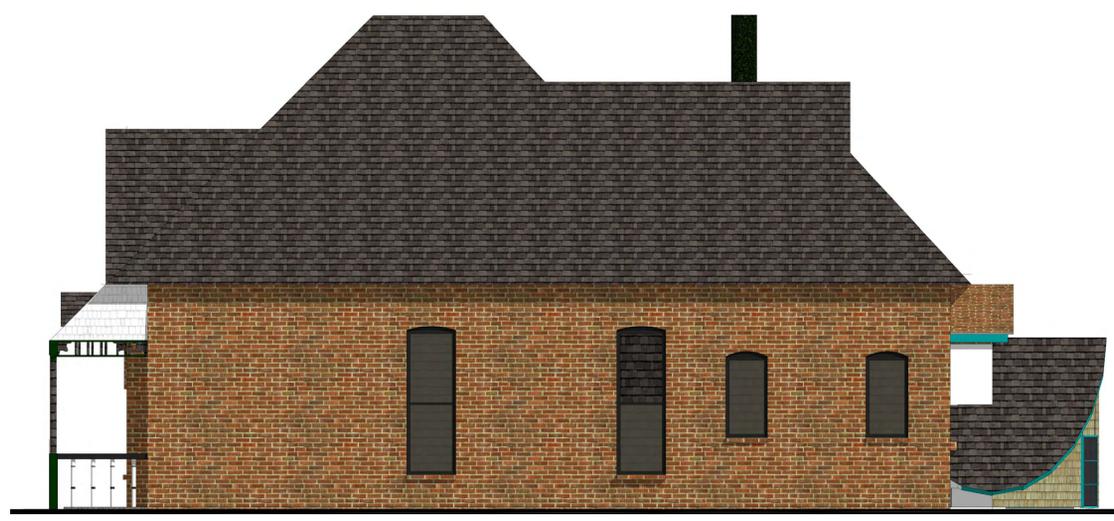
5 EXISTING NORTH ELEVATION
 A4.0 1/4" = 1'



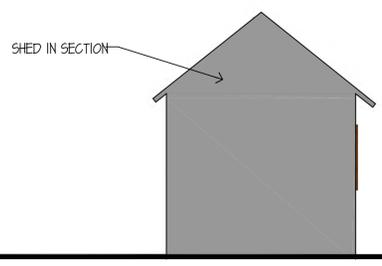
4 EXISTING NORTH SHED ELEVATION
 A4.0 1/4" = 1'



3 EXISTING SOUTH SHED ELEVATION
 A4.0 1/4" = 1'



2 EXISTING WEST ELEVATION
 A4.0 1/4" = 1'



1 EXISTING SOUTH ELEVATION
 A4.0 1/4" = 1'

Seal:

#	DATE	ISSUED FOR

Construction Issue Date:
 Drawing Title:

EXISTING ELEVATIONS

Sheet #:

A4.0



LEFT SIDE PROPOSED



LEFT SIDE EXISTING



STREET VIEW PROPOSED



STREET VIEW EXISTING



RIGHT SIDE PROPOSED



RIGHT SIDE EXISTING

Seal:

#	DATE	ISSUED FOR

Construction
 Issue Date:
 Drawing Title:

FRONT ELEVATIONS

Sheet #:

A3.0

Regular Meeting **Historic Preservation Commission** **April 10, 2019**

that will take place because most of what's there now is not original, it's from the 70's. It will be a dramatic construction project and there will be interpretive signs put up on the fence, but there will likely be a lot of public discussion about the impacts of that project.

Ms. Simon mentioned a change in the agenda. The hearing on 517 E Hopkins has been moved to be the last item on the agenda.

105 E. Hallam Street - Conceptual Major Development, Relocation and Setback Variations, Continued from 2/27

Ms. Simon introduced the project. She stated that the property is a 3,000 square foot lot with a brick Victorian cottage on it. This cottage was originally a twin to the house next to it, but the west building was remodeled many years ago and they don't share many common characteristics at this point.

Ms. Simon stated that HPC reviewed a request previously and continued for re-study. The idea of the project is to pick up the brick cottage, excavate a new basement on the site, move the cottage five feet forward of where it is now, and build a new addition behind it. There is also a brick shed along the alley that straddles the property line between the alleyway and the one to the west. No changes are proposed for that building.

Ms. Simon stated that one of the things that HPC discussed last time was the character of the addition being proposed to the house. The addition is 500 square feet under the maximum allowable. This project is subject to the new design guidelines which do carry certain restrictions. The applicant has done a redesign that is fairly minor in scope, but staff finds it to be successful. The main pitch on the addition will be steeper than was shown before and it matches the gable end. There is a secondary shed roof that hangs off that gable that has been lowered in pitch. It's slid down and has less visibility from the front of the site. Staff does find those amendments appropriate, supports the forward relocation of the building, and thinks that it adequately still relates to the historic resources that are on the block. Staff is recommending conceptual approval, though think that the fireproofing issues, the green roof condition for the basement, and the maintaining of the existing relationship to grade need to be addressed. The applicant will need to provide the \$30,000 in financial security. Ms. Simon reviewed the setback variations proposed in the application. Staff does support the variations. The last condition of this conceptual approval would be that the applicant apply for final within the year.

Ms. Simon stated that the Commission had previously talked about how stormwater would be managed on the site. The applicant determined that Engineering will accept an offsite improvement, an upgrade to the stormwater that serves the whole neighborhood. There was also discussion about a sidewalk in front of the building. It has been determined that the cottonwood trees would not tolerate that. So that will be deferred until the cottonwood trees can be removed and new street trees can be installed.

Ms. Thompson asked Ms. Simon if neighboring lots encroach into the front yard requirement.

Ms. Simon responded that neither of those neighbors have been relocated or granted a variance.

Ms. Greenwood asked what is being proposed regarding the stormwater.

Ms. Simon stated that the proposal is to improve a failure at the corner of the block. Water collection could be improved, and some treatment would be built into the system. Engineering indicated that that's not going to be an option every time, but this was a problematic location.

Mr. Moyer asked when the twin house was remodeled.

Ms. Simon responded that it was done in the 1980's and she does not believe that there was HPC approval for it.

Applicant

Seth Hmielowski, introduced himself and Melanie Noonan as employees of ZGroup Architects, representing the client. He stated that their presentation will focus on the changes they made since the first round.

Ms. Noonan showed photos of the house and two houses that sit adjacent. She stated that the applicants are looking to preserve the Victorian and move it forward on the site to align it with the adjacent property. She stated that this would help give it more prominence and create room for a one car garage. They are proposing to remove the non-historical addition at rear of the property.

Ms. Noonan stated they made an adjustment to the window wells in response to the Commission's concern at the previous meeting. She showed the location of the cottonwood trees and stated that the Parks department is recommending ten feet for the excavation line, though they are recommending finding out where the cottonwood roots are. The new plan shortened the connector between the house and the addition to ten feet. Ms. Noonan showed the proposed floor plans and stated that they are asking for a five-foot variance at the rear below grade and at the second floor. At the front of the property, they are looking for a five-foot variance just below grade.

Ms. Noonan showed on the slide the previous east elevation compared to the revised plan. They removed the large shed dormer and changed the pitch of the gable. They also lowered the roof to keep it lower than the existing historic. They lowered the shed roof that comes off the side to minimize the heights of everything. She showed that the revised plan changes the pitch on the front elevation to match the existing and lowers the shed. On the backside, the revised plan lowers the plate height for the gable to minimize the height of the second floor.

Ms. Noonan showed renderings of the proposed new location with the two-story addition on the backside. The shed is attached to the shed next door, which is the reason it will stay in its current location. The applicants will need variations for that location because it sits right on the property line on the west side and south.

Mr. Hmielowski showed a picture of the existing stoop. He stated that the applicants want to keep it at the same elevation when it's moved. He asked Ms. Simon if staff wants to see the front porch be at the door elevation.

Ms. Simon stated staff wants to see the stone step onto the front door. They will work the details out more at final review, but that the step should probably be wood, not concrete.

Ms. Noonan stated that there is a statement from Bailey House Movers in the meeting packet detailing how they would go about moving a brick house in order to address the Commission's concerns from the previous meeting.

Ms. Greenwood asked if the commissioners had any questions for the applicants.

Mr. Moyer asked why moving the house up will bring it into prominence. He stated a belief that matching the neighboring houses would give it prominence. He asked why they should be taken out of the historical context that they are in now.

Ms. Noonan replied that the sister house has been modified and no longer matches.

Mr. Hmielowski stated that, by moving the house forward, it is making the lot feasible for development. They are working around the shed in the back that can't be moved. Also, by moving it forward, it is coming into alignment with the yellow house on the left, and it will be more pronounced within the row.

Mr. Halferty asked if the applicants have considered a dormer form to help break up the mass of the east elevation roof.

Mr. Hmielowski stated that his understanding was that the dormer was a bit more obtrusive from the front and was adding more mass, which is why they removed it from the previous design.

Ms. Thompson asked how set back the connector is from the west wall of the historic building.

Ms. Noonan replied that it's offset six inches.

Mr. Hmielowski stated that they put it where the existing non-historic addition is, so by doing that they're trying to maintain the brick.

Ms. Thompson asked if materiality is final.

Ms. Greenwood replied that it is.

Ms. Simon stated that applicants need to make a final determination on the form fenestration materials guideline at this point.

Ms. Thompson asked what the material is for the connector.

Ms. Noonan replied that they were looking at some different options. They wanted something that's a smaller scale that would be in line with the wood that's on the existing.

Public Comments

Ms. Greenwood opened the meeting to public comment. Seeing none, she closed the public comment portion of the hearing.

Commission Discussion

Ms. Greenwood read the variance requests from the packet. She asked if the shed is going to get any kind of remodel.

Ms. Noonan replied no, but they will have to fireproof it.

Ms. Greenwood read staff's recommended conditions for approval from the packet. She stated that there were also supposed to be some conditions related to the engineering requirements for the water treatment. She asked the applicants if they have any information on that.

Mr. Hmielowski replied that they got a new study the day before. They are doing some sharing with the City, taking care of their site drainage into the curb and gutter. They are upgrading that corner for the City.

Ms. Greenwood opened the hearing to Commission discussion.

Mr. Moyer stated that he is opposed to moving the house forward. He agrees with everything in the proposal except for that. He reiterated that he would like the Commission to have a work session to get re-focused on their mission to preserve the historic character of each house and lot.

Mr. Halferty stated that the applicant has done a great job of understanding the feedback from their first meeting. He was satisfied by the applicants' reasons for moving the house forward on the lot. He does not think the Commission should require the applicant to conform to the sister house that was modified without the Commission's oversight. He stated that he is okay with approval with the conditions recommended by staff.

Mr. Kendrick stated that he agrees with what Mr. Halferty said. He stated that he is in favor of the applicants planting on top of the subgrade space in the front yard. He would also like to see something to break up the east elevation a little bit more. It is a much better proposal than it was originally.

Ms. Greenwood stated that there is only so much room on the site.

Ms. Thompson stated that she is on board with the massing. She is looking forward to seeing some more details about the project in final review. She would vote to approve it conceptually.

Mr. Blaich passed on commenting, stating that he has laryngitis.

Ms. Greenwood stated that she does not feel that this is a good project. The massing and roofline overwhelms the Victorian and she does not think that a whole lot was changed since their first proposal. She does not feel that this meets the guidelines in terms of matching the rooflines. It looks like a larger building than it is. The applicants have gone to the maximum height of the existing historic resource and they've continued that throughout the new addition. She doesn't think additions should look larger in mass than the most important part of the historic building. It does not meet the Commission's guidelines of trying to be in conformity with the historic resource. She does not have a problem with moving the building forward. For her, the problem is the massing. She is not in favor of granting variances for the front yard if they are basically starting a new project. This is setting a precedent. As a new project, it should be closer to meeting the guidelines. She stated that she will not be voting for this project to move forward.

Mr. Halferty responded that the Commission is comparing a one-story historic resource with a two-story addition, and the height is still comparable. He stated that that is not easy to achieve. He also stated that he would like to see examples of projects that the Commission has approved where the addition is the same height or smaller than the historic resource.

Ms. Greenwood responded that they are looking at this project specifically.

Ms. Moyer stated that he agrees with Ms. Greenwood's point about not granting variances for the project. He stated that he does not see why a variance for something underground would be necessary, except regarding what is planted on the ground on top.

Ms. Greenwood stated that we do not want to go in the direction. She expressed concern about the amount of variances the Commission issues.

Ms. Bryan stated that the applicants are representing variations, not variances.

Ms. Simon stated that variances request demonstration of a hardship. Variations are within HPC's purview to grant solely based on the conditions of the historic building.

Ms. Greenwood stated that this does not change her opinion. She expressed concern that the house has one parking space but five bedrooms. She stated that she does not think that allowing for the maximum development potential is good historic planning.

Mr. Halferty stated that the proposal is for four bedrooms.

Mr. Halferty motioned to approve 105 E Hallam with the conditions stated in staff's memo. He stated that, when it comes time for the relocation, that the Commissioners can review the stabilization for the brick house as well as the porch detailing and its relationship to the grade and stormwater finalization. Ms. Thompson seconded.

Ms. Greenwood stated that City Council is concerned about the massive roofs on the projects that HPC is approving. She stated that this project is an example of where they should not go.

Commission vote. Resolution passed four to two with Ms. Greenwood and Mr. Moyer against.

302 E Hopkins Avenue – Minor Development

Kevin Reyes introduced himself as a Planner with the City of Aspen. He introduced the project, stating that the site is located in the commercial core zone district, within the historic district, and includes two historic resources on site. Mr. Reyes stated that 302 E Hopkins was built as a miner's cottage in 1883 and it's one of the oldest remaining structures in town. It's used for commercial and residential uses over time. It currently houses the Hillstone Restaurant Group's White House Tavern restaurant. He stated that there was an accessory structure located on site at one time. Staff finds that the location of the historic shed is an important historic resource in this location. As part of the project for this site, the applicant is requesting to relocate some utility meters at the rear of the property between the historic shed and the rear of the non-historic addition of that building. The second request is to install synthetic grass in the front yard of that property.

Mr. Reyes stated that the existing utility meters are located within the rear trash area for the property next door at 304 E Hopkins, which is the next item on the agenda. He stated that part of the development for 304 E Hopkins required them to reconfigure the trash area at the rear in order to meet the new standards for Environmental Health. In order to find a solution to that tight space back there, Hillstone Restaurant Group proposed combining the trash area for the units at 304 and 302 in order to meet those dimensional requirements. That led to some difficulties with regards to the placement with the utility meter, located within that trash area. When Environmental Health reviewed the proposed trash area, it was their understanding that the utility meters would be located within that trash area and they approved the proposed combined trash area with that understanding. After that was approved, the Hillstone Restaurant Group met with Black Hills Energy. There were some concerns raised regarding the accessibility to those meters. The second concern is the trash receptacles in that area knocking in to the utility meters. The applicant is requesting to move the utility meters out of the trash room and into a new location between that historic shed and the rear of the building. At this point, the applicant is proposing to have the meters set back five feet from the lot line but are open to moving it more than that if necessary. They are proposing to mount it on a stand that would not impact the historic shed.

Mr. Reyes cited Historic Preservation Guideline Historic guideline 12.4, stating that they should minimize the visual impacts of utilitarian areas, such as mechanical equipment and trash storage. Mechanical equipment may only be mounted on a building on an alley façade. Staff finds that this criterion is not met. The owner should be able to redesign the interior of the building to accommodate a larger trash area and possibly relocate those meters within that trash area or locate it on the exterior of the building and create some sort of space where it would be out of the way for garbage trucks and other vehicles passing through. The next criterion is 1.31, which is to minimize the visual impacts of utility connections and service boxes. They should be grouped discreetly and use screening and materials to complement the architecture. Staff finds that this criterion is not met. This space is going to be very visible from the public right of way. The applicant proposed screening these meters, which would entail drilling into the bricks of that non-historic addition. The Building Department has also mentioned that they would require a roof overhang above the gas utility meters. In staff's opinion, the screening and roof would contribute to impacting the historic integrity of this space.

Mr. Reyes stated that Historic Preservation Design Guideline 8.1 states that, if an existing secondary structure is historically significant, then it must be preserved. When treating a historic secondary building, respect its character-defining features. These include its materials, roof form, windows, doors, and architectural details. As part of the placement of these utilities, in order for them to meet the building requirements and the requirements for Black Hills Energy, there would be some snowmelt infrastructure that would be required to be installed on top of the historic shed, which would include heat tape and snow guards. Installing these

RESOLUTION #6, SERIES OF 2019

A RESOLUTION OF THE ASPEN HISTORIC PRESERVATION COMMISSION GRANTING CONCEPTUAL MAJOR DEVELOPMENT, RELOCATION AND SETBACK VARIATIONS FOR THE PROPERTY LOCATED AT 105 E. HALLAM STREET, THE EAST 25.14' OF LOT B AND THE WEST 8' OF LOT C, BLOCK 65, CITY AND TOWNSITE OF ASPEN, COLORADO**PARCEL ID:** 2735-124-37-002

WHEREAS, the applicant, 105 E Hallam LLC, represented by Z Group Architects, has requested HPC approval for Conceptual Major Development, Relocation and Setback Variations for the property located at 105 E. Hallam Street, the east 25.14' of Lot B and the West 8' of Lot C, Block 65, City and Townsite of Aspen, Colorado; and

WHEREAS, Section 26.415.070 of the Municipal Code states that "no building or structure shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or district until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review;" and

WHEREAS, for Conceptual Major Development Review, the HPC must review the application, a staff analysis report and the evidence presented at a hearing to determine the project's conformance with the City of Aspen Historic Preservation Design Guidelines per Section 26.415.070.D.3.b.2 and 3 of the Municipal Code and other applicable Code Sections. The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny; and

WHEREAS, for approval of Relocation, the application shall meet the requirements of Aspen Municipal Code Section 26.415.090.C, Relocation of a Designated Property; and

WHEREAS, for approval of Setback Variations, the application shall meet the requirements of Aspen Municipal Code Section 26.415.110.C, Setback Variations; and

WHEREAS, Amy Simon, Historic Preservation Officer, in her staff memo to HPC, recommended approval with conditions; and

WHEREAS, HPC reviewed the project on February 27th and April 10th, 2019. HPC considered the application, the staff memo and public comments, and found the proposal consistent with the review standards and granted approval with conditions by a vote of 4 to 2.

NOW, THEREFORE, BE IT RESOLVED:

Section 1: Conceptual Major Development Review, Relocation and Setback Variations

HPC hereby approves Conceptual Major Development, Relocation and Setback Variations for 105 E. Hallam Street with the following conditions:

1. At Final review, confirm how the historic structures and eaves will be fire rated where they are within 5' or less of property lines.
2. At Final review, confirm that the extension of the basement towards the front lot line can be accomplished within the Park's Departments requirements to protect the large cottonwood tree at the front of the site.
3. At Final review, verify that sod can be planted on top of the basement which is forward of the house.
4. At Final review, confirm that any new foundation that is visible below the historic structure will be exposed concrete or metal flashing. Provide detailed information on the relationship of the house and front porch to the new finished grade. Confirm that the exposed curb of all lightwells will be the minimum necessary.
5. At Final review, provide the proposed stormwater plan.
6. As part of the approval to relocate the house on the site, the applicant will be required to provide a financial security of \$30,000 until the house is set on the new foundation. The financial security is to be provided with the building permit application.
7. The following variations are accepted:
 - A 5' reduction of the front yard setback for the basement only
 - A 5' reduction of the rear yard setback for the basement and for the second floor of the addition
 - A 4" reduction of the west sideyard for the historic house
 - A 4" reduction of the combined sideyard requirement
 - The historic shed is to remain in place with existing encroachments in the rear and west yards.
8. A development application for a Final Development Plan shall be submitted within one (1) year of the date of approval of a Conceptual Development Plan. Failure to file such an application within this time period shall render null and void the approval of the Conceptual Development Plan. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a Conceptual Development Plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

Section 2: Material Representations

All material representations and commitments made by the Applicant pursuant to the development proposal approvals as herein awarded, whether in public hearing or documentation presented before the Community Development Department, the Historic Preservation Commission, or the Aspen City Council are hereby incorporated in such plan development approvals and the same shall be complied with as if fully set forth herein, unless amended by other specific conditions or an authorized authority.

Section 3: Existing Litigation

This Resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 4: Severability

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

APPROVED BY THE COMMISSION at its regular meeting on the ___ day of ___, 2019.

Approved as to Form:

Approved as to Content:

Andrea Bryan, Assistant City Attorney

Gretchen Greenwood, Chair

ATTEST:

Jeannine Stickle, Records Manager



TO: Mayor Skadron and City Council

FROM: Mike Kraemer, Senior Planner

THRU: Jessica Garrow, Community Development Director

RE: **Policy Resolution: APCHA referral Land Use Code Amendment Resolution 52, Series of 2019**

DATE: May 13th, 2019

SUMMARY:

The Aspen City Council and the Pitkin County Board of County Commissioners (BOCC) are currently considering amendments to the existing Aspen/Pitkin Housing Authority (APCHA) Intergovernmental Agreement (IGA) relating to APCHA Board make up, among other changes. Due to these considerations, the Community Development Department has identified that the Land Use Code may need to be amended as it relates to APCHA review requirements for City of Aspen land use applications. City Council policy direction is needed to initiate changes to the Land Use Code and the Community Development Department is seeking this direction.

Staff has prepared a draft policy Resolution (Resolution 52, Series 2019) reflective of this issue. If the Policy Resolution is approved, the first reading of the Land Use Code Amendment Ordinance (Ordinance 12, Series 2019) is scheduled for tonight’s meeting with 2nd Reading scheduled for May 20th, 2019. Land Use Code Amendments are only required should the amended IGA be approved by both the City of Aspen and Pitkin County. If the amended IGA is not approved, Policy Resolution 52, Series 2019 becomes irrelevant and the required Land Use Code amendments will not be pursued.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed Policy Resolution.

LAND USE REQUESTS AND REVIEW PROCEDURES:

This meeting is to discuss policy and potential changes to the City’s Land Use Code. Pursuant to Land Use Code Section 26.310, City Council is the final review authority for all code amendments.

All code amendments are subject to a three-step process. This is the second step in the process:

1. Public Outreach
2. **Policy Resolution by City Council indicating if an amendment should be pursued**
3. Public Hearings on Ordinance outlining specific code amendments.

SUMMARY AND BACKGROUND:

Currently, the APCA Board is comprised of 7 directors appointed by both the City Council and the BOCC. If approved, the amended IGA would create a 5 member board, three which represent the community at large, and two elected officials that represent their respective governing body. Currently, the Land Use Code states that when employee housing is provided as mitigation, an APCA Board recommendation is required. Other APCA Board land use review references also exist throughout the Land Use Code. City Council member participation on the APCA Board has the potential to create a conflict of interest during the land use application review process when APCA referral comments are provided to the City Council in Council's consideration of a final decision or an appeal. To eliminate any potential conflict of interest, the Land Use Code will need to be amended to remove the APCA Board referral and recommendation requirements. Removing the referral process would then revert to the City's standard process which refers a land use application to the APCA Staff.

PUBLIC OUTREACH:

Public Outreach is Step 1 in the required 3 step process for a Land Use Code Text Amendment. Through scheduled City Council work sessions that can be attended by the public, the proposed amendments to the IGA have been brought to the attention of the community. Staff will also place a notice about the Land Use Code amendments in the Community Development Newsletter that is emailed monthly to approximately 500 local businesses and interested parties.

STAFF RECOMMENDATION:

Staff recommends adoption of the attached Policy Resolution.

If the attached Policy Resolution is approved, Staff also recommends that the 1st reading of the Land Use Code Amendment Ordinance also be approved (separate memo and ordinance).

RECOMMENDED MOTION (ALL MOTIONS ARE PROPOSED IN THE AFFIRMATIVE):

"I move to approve Resolution No. 52 Series of 2019, approving a Policy Resolution regarding Land Use Code Amendments for APCA referrals."

ATTACHMENTS:

Exhibit A – Review criteria

**RESOLUTION NO. 52,
(SERIES OF 2019)**

**A RESOLUTION OF THE CITY OF ASPEN CITY COUNCIL REQUESTING
AMENDMENTS TO THE LAND USE CODE FOR APCA REFERRALS**

WHEREAS, pursuant to Section 26.310.020(A), the Community Development Department received direction from City Council to draft a Land Use Code amendment to eliminate language regarding Aspen/Pitkin County Housing Authority (APCHA) review and recommendation requirements for land use applications, in order to respond to recent amendments to the City of Aspen and Pitkin County Intergovernmental Agreement (IGA) that changes the makeup of the APCA Board and potentially creates a conflict of interest for City Council members; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted Public Outreach through the Community Development Newsletter and the City Council conducted work session discussions, prior to the adoption of the code amendments; and,

WHEREAS, City Council has reviewed the proposed code amendment policy direction, and finds it meets the criteria outlined in Section 26.310.040; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on May 13th, 2019, the City Council approved Resolution No. 52, Series of 2019, by a ____ - ____ (- -) vote, requesting code amendments to the Land Use Code; and,

WHEREAS, this Resolution does not amend the Land Use Code, but provides direction to staff for amending the Land Use Code; and,

WHEREAS, the City Council finds that this Resolution furthers and is necessary for the promotion of public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN AS FOLLOWS:

Section 1: Code Amendment Objective and Direction

The objective of the proposed Land Use Code amendment is to eliminate any potential conflict of interest between the Aspen City Council and APCA in the review of land use applications by deleting references to APCA Board review and recommendation requirements and replacing with references for compliance with the APCA Guidelines.

Section 2:

This resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions or ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior resolutions or ordinances.

Section 3:

If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

FINALLY, adopted this ___ day of _____, 2019.

Steven Skadron, Mayor

ATTEST:

APPROVED AS TO FORM:

Linda Manning, City Clerk

James R True, City Attorney



26.310.040. Amendments to the Land Use Code standards of review – Initiation

In reviewing a request to pursue an amendment to the text of this Title, per Section 26.310.020(B)(2), *Step Two – Public Hearing before City Council*, the City Council shall consider:

A. Whether there exists a community interest to pursue the amendment.

Staff Findings:

There is community interest in amending the Land Use Code to eliminate the APCA referral requirement, thus removing the potential for a conflict of interest for the City Council as it relates to land use applications. Community interest exists with this Land Use Code amendment, and Staff finds this criterion to be met.

B. Whether the objectives of the proposed amendment furthers an adopted policy, community goal, or objective of the City including, but not limited to, those stated in the Aspen Area Community Plan.

Staff Findings:

The proposed Land Use Code amendment to change APCA Board referrals to the APCA Staff in the land use process will further the integrity of the process and foster better governance. The proposed amendment is in line with the goals and objectives of the City. Staff finds this criterion to be met.

C. Whether the objectives of the proposed amendment are compatible with the community character of the City and in harmony with the public interest and the purpose and intent of this Title.

Staff Findings:

The objective of the proposed amendment is to eliminate the potential for a conflict of interest for the City Council and APCA referrals. Eliminating this conflict is clearly compatible with community character and in harmony with the intent of this Land Use Code. Staff finds this criterion to be met.



TO: Mayor Skadron and City Council

FROM: Mike Kraemer, Senior Planner

THRU: Jessica Garrow, Community Development Director

RE: **APCHA Referral Land Use Code Amendment Ordinance 12, Series of 2019. 1st Reading**

DATE: May 13th, 2019

SUMMARY:

The attached Ordinance amends the City of Aspen Land Use Code to eliminate the references and requirements for Aspen/Pitkin County Housing Authority (APCHA) referrals for land use applications. This amendment is being processed due to the potential adoption of amendments to the City of Aspen and Pitkin County APCHA Intergovernmental Agreement (IGA) which could place City Council members on the APCHA Board, potentially creating a conflict of interest during the land use process. This is the first reading of the Text Amendment Ordinance, with 2nd reading (public hearing) scheduled for May 20th, 2019.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed Ordinance on 1st Reading.

LAND USE REQUESTS AND REVIEW PROCEDURES:

This meeting is to review potential changes to the City's Land Use Code. Pursuant to Land Use Code Section 26.310, City Council is the final review authority for all code amendments.

All code amendments are subject to a three-step process. This is the second step in the process:

1. Public Outreach
2. Policy Resolution by City Council indicating if an amendment should be pursued
3. **Public Hearings on Ordinance outlining specific code amendments.**

DISCUSSION:

Currently, the Land Use Code states that when employee housing is provided as mitigation, an APCHA Board recommendation is required. Other APCHA Board references also exist throughout the Land Use Code. City Council member participation on the APCHA Board has the potential to create a conflict of interest during the land use application review process when APCHA referral comments are provided to the City Council in consideration of a final decision, or an appeal. To eliminate any potential conflict of interest, the Land Use Code will need to be amended to remove the APCHA Board review and recommendation requirements, replacing them with an APCHA Staff referral. Removing these

requirements will then establish the City's standard process which refers a land use application to the Department Staff.

At tonight's meeting, the City Council has also heard and considered Policy Resolution No. 52, Series 2019 which establishes direction for a Land Use Code Amendment and is the 1st step in the 3-step process. If Policy Resolution No. 52, Series 2019 is approved, Staff recommends approval of Ordinance 12, Series 2019 on 1st Reading, and set 2nd Reading (public hearing) for May 20th, 2019. Land Use Code Amendments are only required should the amended IGA be approved by both the City of Aspen and Pitkin County. If the amended IGA is not approved, Policy Resolution 52, Series 2019 becomes irrelevant and Ordinance No. 12, Series 2019 amending the Land Use Code will no longer be pursued.

STAFF RECOMMENDATION:

Staff recommends adoption of the Ordinance No. 12, Series 2019, on first reading and set 2nd Reading (public hearing) for May 20th, 2019.

RECOMMENDED MOTION (ALL MOTIONS ARE PROPOSED IN THE AFFIRMATIVE):

"I move to approve Ordinance No. 12 Series of 2019, amending the City of Aspen Land Use Code to eliminate APCHA referral and recommendation requirements, on first reading and set 2nd Reading (public hearing) for May 20th, 2019."

ATTACHMENTS:

Exhibit A – Staff Findings

Exhibit B - Redline version of the proposed Land Use Code Amendments

**ORDINANCE NO. 12
SERIES OF 2019**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING CITY OF ASPEN
LAND USE CODE RELATED APCA BOARD REFERRALS AND LAND USE
APPLICATIONS**

WHEREAS, in accordance with Sections 26.208 and 26.310 of the City of Aspen Land Use Code, the City Council of the City of Aspen directed the Community Development Department to draft a code amendment to eliminate language regarding Aspen/Pitkin County Housing Authority (APCHA) review and recommendation requirements for land use applications, in order to respond to recent amendments to the City of Aspen and Pitkin County Intergovernmental Agreement (IGA) that changes the makeup of the APCA Board; and,

WHEREAS, pursuant to Chapter 26.310, applications to amend the text of Title 26 of the Municipal Code shall begin with Public Outreach, a Policy Resolution reviewed and acted on by City Council, and then final action by City Council after reviewing and considering the recommendation from the Community Development; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted Public Outreach through the Community Development Newsletter regarding the code amendment and City Council conducted work sessions; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on May 13th, 2019, the City Council approved Policy Resolution No. 52, Series of 2019, by a ___ to _____ (_ - _) requesting a Land Use Code amendment to eliminate APCA Board review and recommendation requirements and delete other references relating to APCA review, and replacing with references for compliance with the APCA Guidelines; and,

WHEREAS, the Aspen City Council has reviewed the proposed Land Use Code amendment at 1st Reading on May 13th, 2019 and at 2nd Reading (public hearing) on May 20th, 2019 and finds that the amendments meet or exceed all applicable standards pursuant to Chapter 26.310; and,

WHEREAS, the proposed Land Use Code amendment to eliminate APCA Board referrals in the land use process will further the integrity of the process and foster better governance.

WHEREAS, The proposed amendment is consistent and compatible with the goals and objectives of the City of Aspen and the Aspen Area Community Plan (AAP); and,

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare; and

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

Section 1: Code Amendment Objective

The objective of the proposed Land Use Code amendment is to eliminate potential conflicts of interests between the City Council and APCHA in the review of land use applications.

Section 2:

City of Aspen Land Use Code Section 26.470.080.D.7.a is hereby deleted and replaced in its entirety with the following:

- a. The proposed units comply with the Guidelines of the Aspen/Pitkin County Housing Authority, as amended.

Section 3:

City of Aspen Land Use Code Section 26.470.080.D.7.b is hereby deleted and replaced in its entirety with the following:

- b. Required affordable housing may be provided through a mix of methods outlined in this chapter, including newly built units, buy down units, certificates of affordable housing credit, or cash-in-lieu.

Section 4:

City of Aspen Land Use Code Section 26.470.090.B.3.b is hereby deleted and replaced in its entirety with the following:

- b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit. The mitigation unit must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.

Section 5:

City of Aspen Land Use Code Section 26.470.090.B.3.d is hereby deleted and replaced in its entirety with the following:

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the

Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

Section 6:

City of Aspen Land Use Code Section 26.470.090.C.2.b is hereby deleted and replaced in its entirety with the following:

- b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit(s). The mitigation unit(s) must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.

Section 7:

City of Aspen Land Use Code Section 26.470.090.C.2.d is hereby deleted and replaced in its entirety with the following:

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

Section 8:

City of Aspen Land Use Code Section 26.470.100.D.1 is hereby deleted and replaced in its entirety with the following:

- 1) The proposed units shall be deed-restricted as "for sale" units and transferred to qualified purchasers according to the Aspen/Pitkin County Housing Authority Guidelines. The owner may be entitled to select the first purchasers, subject to the aforementioned qualifications, pursuant to the Aspen/Pitkin County Housing Authority Guidelines. The deed restriction shall authorize the Aspen/Pitkin County Housing Authority or the City to own the unit and rent it to qualified renters as defined in the Affordable Housing Guidelines established by the Aspen/Pitkin County Housing Authority, as amended.

Section 9:

City of Aspen Land Use Code Section 26.470.100.E.2 is hereby deleted and replaced in its entirety with the following:

2. Requirements for demolishing affordable multi-family housing units: In the event a project proposes to demolish or replace existing deed-restricted affordable housing units, the redevelopment may increase or decrease the number of units, bedrooms or net livable area such that there is no decrease in the total number of employees housed by the existing units. The overall number of replacement units, unit sizes, bedrooms and category of the units shall comply with the Aspen/Pitkin County Housing Authority Guidelines.

Section 10:

City of Aspen Land Use Code Section 26.470.100.E.4 is hereby deleted and replaced in its entirety with the following:

4. Location requirement. Multi-family replacement units, both free-market and affordable, shall be developed on the same site on which demolition has occurred, unless the owner shall demonstrate and the Planning and Zoning Commission determines that replacement of the units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.

When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined acceptable to the Planning and Zoning Commission, or may replace the units by extinguishing the requisite number of affordable housing credits, pursuant to Sec. 26.540, Certificates of Affordable Housing Credit.

When calculating the number of credits that must be extinguished, the most restrictive replacement measure shall apply. For example, for an applicant proposing to replace one 1,000 square foot three-bedroom unit at the 50% rate using credits, the following calculations shall be used:

- 50% of 1,000 square feet = 500 square feet to be replaced. At the Code mandated rate of 1 FTE per 400 square feet of net livable area, this requires 1.25 credits to be extinguished; or

- A three-bedroom unit = 3.0 FTE's. 50% of 3.0 FTE's = 1.50 credits to be extinguished.

Therefore, the applicant must extinguish 1.50 credits to replace a three-bedroom unit at the 50% rate. The credits to be extinguished would be Category 4 credits.

Section 11:

City of Aspen Land Use Code Section 26.470.110.A.1.c is hereby deleted and replaced in its entirety with the following:

- c. The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors, families, etc.).

Section 12:

City of Aspen Land Use Code Section 26.470.110.B.2 is hereby deleted and replaced in its entirety with the following:

2. The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors and families).

Section 13:

City of Aspen Land Use Code Section 26.470.150.A.2 is hereby deleted and replaced in its entirety with the following:

- 2) The change does not alter the number, size, type or deed restriction of the proposed affordable housing units, subject to compliance with the Aspen/Pitkin County Housing Authority Guidelines.

Section 14:

City of Aspen Land Use Code Section 26.520.020 hereby deleted and replaced in its entirety with the following:

General: Accessory dwelling units and carriage houses are separate dwelling units incidental and subordinate in size and character to the primary residence, located on the same parcel, and which may be rented or sold to a local working resident as defined by the Aspen/Pitkin County Housing Authority Guidelines and as limited by this Chapter. A primary residence may have no more than one (1) ADU or carriage house. An ADU or carriage house may not be

accessory to another ADU or carriage house. A detached ADU or carriage house may only be conveyed separate from the primary residence as a "for sale" affordable housing unit to a qualified purchaser pursuant to the Aspen/Pitkin County Housing Authority Guidelines, as amended. ADUs and carriage houses shall not be considered units of density with regard to zoning requirements. ADUs and carriage houses shall not be used to satisfy employee housing requirements of the Growth Management Quota System (GMQS), except that a detached ADU or carriage house which is deed restricted and conveyed separate from the primary residence as a "for sale" affordable housing unit to a qualified purchaser pursuant to the Aspen/Pitkin County Housing Authority Guidelines, as amended, shall qualify for issuance of a Certificate of Affordable Housing Credit, pursuant to Chapter 26.540. All ADUs and carriage houses shall be developed in conformance with this Chapter.

Section 15:

Aspen Land Use Code Chapter 26.520.070.A is hereby deleted and replaced in its entirety with the following:

Deed restrictions and enforcement

- A. Deed restrictions.** At a minimum, all properties containing an ADU or a carriage house shall be deed restricted in the following manner:
- The ADU or carriage house shall be registered with the Aspen/Pitkin County Housing Authority.
 - Any occupant of an ADU or carriage house shall be qualified as a local working resident according to the current Aspen/Pitkin County Housing Authority Guidelines, as amended.
 - The ADU or carriage house shall be restricted to lease periods of no less than six (6) months in duration or as otherwise required by the current Aspen/Pitkin County Housing Authority Guidelines. Leases must be recorded with the Aspen/Pitkin Housing Authority.

A detached and permanently affordable Accessory Dwelling Unit or Carriage House qualifying a property for a floor area exemption, pursuant to Section 26.575.020 – Calculations and Measurements, shall be deed restricted as a "for sale" affordable housing unit and conveyed to a qualified purchaser, according to the Aspen/Pitkin County Housing Authority Guidelines, as amended and according to the following sales price limitations:

- Accessory dwelling units from 300 to 500 net livable square feet – Category 3 or lower.

- Accessory dwelling units from 501 to 800 net livable square feet – Category 4 or lower.
- Carriage houses from 800 to 1,000 net livable square feet – Category 5 or lower.
- Carriage houses from 1,001 to 1,200 net livable square feet – Category 6 or lower.

Category sales prices shall be those specified in the Aspen/Pitkin County Housing Authority Guidelines, as amended. The initial developer may select the first qualified purchaser of the unit. Subsequent conveyances shall be according to the lottery sales procedures specified in the Aspen/Pitkin County Housing Authority Guidelines, as amended.

A detached and permanently affordable Accessory Dwelling Unit or Carriage House deed restricted as a “for-sale” affordable housing unit, as described above, and which is not required for mitigation purposes, shall be eligible to receive a Certificate of Affordable Housing Credit pursuant to Chapter 26.540.

Accessory dwelling units deed restricted to mandatory occupancy in exchange for a floor area bonus, prior to the adoption of Ordinance No. 46, Series of 2001, shall be continuously occupied by a local working resident, as defined by the Aspen/Pitkin County Housing Authority Guidelines, for lease periods of six (6) months or greater, unless the owner is granted approval to remove that restriction pursuant to Subsection 26.520.090.B, Removal of Mandatory Occupancy Deed Restriction.

The Aspen/Pitkin County Housing Authority shall provide a standard form for recording accessory dwelling unit or carriage house deed restrictions. The deed restriction shall be recorded with the County Clerk and Recorder prior to a Certificate of Occupancy being issued. The reception number associated with the recordation shall be noted in the building permit file.

Section 16:

Aspen Land Use Code Chapter 26.520.090.A.2 is hereby deleted and replaced in its entirety with the following:

2. The change does not alter the deed restriction for the ADU or carriage house or the alteration to the deed restriction consistent with the Aspen/Pitkin County Housing Authority Guidelines.

Section 17:

Aspen Land Use Code Chapter 26.520.090.B.2.a is hereby deleted and replaced in its entirety with

the following:

- a) Develop a deed restricted affordable housing unit on a site that is not otherwise required to contain such a unit or convert an existing free-market unit to affordable housing status. The replacement affordable housing unit shall be within the Aspen infill area, shall be a one-bedroom or larger sized unit, shall meet the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements), shall be deed restricted as a Category 2, or lower, for-sale unit according to the Aspen/Pitkin County Housing Guidelines, as amended, and shall be transferred to a qualified purchaser through the Aspen/Pitkin County Housing Authority sales process; or,

Section 18: Any scrivener’s errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 19: Effect Upon Existing Litigation.

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 20: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 21: Effective Date.

In accordance with Section 4.9 of the City of Aspen Home Rule Charter, this ordinance shall become effective thirty (30) days following final passage.

Section 22:

A public hearing on this ordinance shall be held on the 20th day of May, 2019, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED, READ AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 13th day of May, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

FINALLY, adopted, passed and approved _____, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

Approved as to form:

James R. True, City Attorney



26.310.050 Amendments to the Land Use Code Standards of review - Adoption.

In reviewing an application to amend the text of this Title, per Section 26.310.020(B)(3), *Step Three – Public Hearing before City Council*, the City Council shall consider:

- A. Whether the proposed amendment is in conflict with any applicable portions of this Title.**

Staff Findings:

There are no known conflicts with any other portions of Title 26. Staff finds this criterion to be met.

- B. Whether the proposed amendment achieves the policy, community goal, or objective cited as reasons for the code amendment or achieves other public policy objectives.**

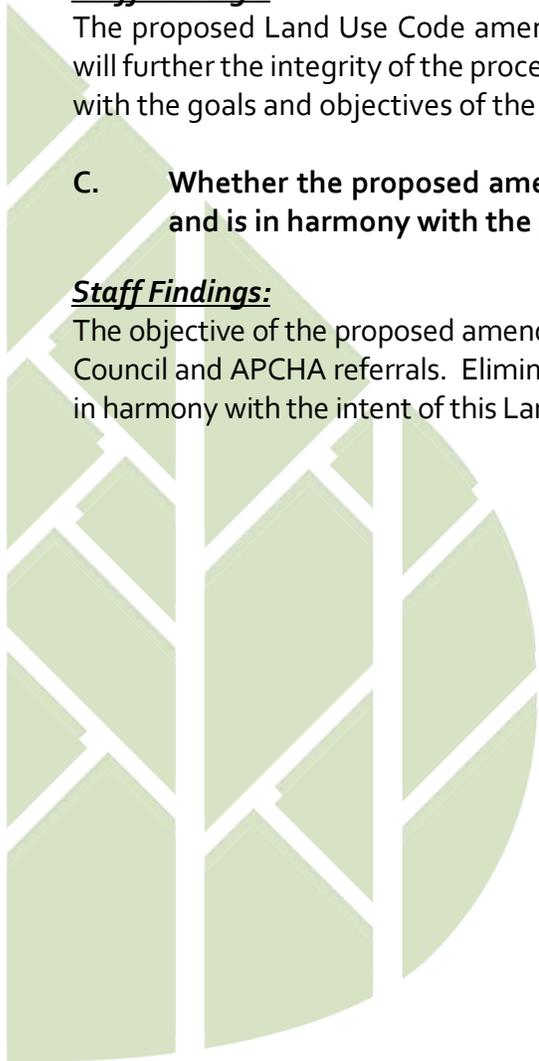
Staff Findings:

The proposed Land Use Code amendment to eliminate APHCA Board referrals in the land use process will further the integrity of the process and foster better governance. The proposed amendment is in line with the goals and objectives of the City. Staff finds this criterion to be met.

- C. Whether the proposed amendment is compatible with the community character of the City and is in harmony with the public interest and the purpose and intent of this Title.**

Staff Findings:

The objective of the proposed amendment is to eliminate the potential for a conflict of interest for the City Council and APCHA referrals. Eliminating this conflict is clearly compatible with community character and in harmony with the intent of this Land Use Code. Staff finds this criterion to be met.



- 5) For free-market residential development, affordable housing net livable area shall be provided in an amount equal to at least thirty percent (30%) of the additional free-market residential net livable area.
- 6) For essential public facility development, mitigation shall be determined based on Section 26.470.110.D.
- 7) For all affordable housing provided as mitigation pursuant to this chapter or for the creation of a Certificate of Affordable Housing Credit pursuant to Chapter 26.540:
 - a. The proposed units comply with the Guidelines of the Aspen/Pitkin County Housing Authority, as amended. ~~A recommendation from the Aspen/Pitkin County Housing Authority shall be required for this standard.~~
 - b. Required affordable housing may be provided through a mix of methods outlined in this chapter, including newly built units, buy down units, certificates of affordable housing credit, or cash-in-lieu. ~~A recommendation from the Aspen/Pitkin County Housing Authority shall be required for this standard, and the approved forms of mitigation methods shall be based on this recommendation.~~
 - c. Affordable housing that is in the form of newly built units or buy-down units shall be located on the same parcel as the proposed development or located off-site within the City limits. Units outside the City limits may be accepted as mitigation by the City Council, pursuant to Section 26.470.110.B. When off-site units within City limits are proposed, all requisite approvals shall be obtained prior to approval of the growth management application.
 - d. Affordable housing mitigation in the form of a Certificate of Affordable Housing Credit, pursuant to Chapter 26.540, shall be extinguished pursuant to Section 26.540.120, Extinguishment and Re-Issuance of a Certificate, utilizing the calculations in Section 26.470.050.F, Employee/Square Footage Conversion.
 - e. If the total mitigation requirement for a project is less than .25 FTEs, a cash-in-lieu payment may be made by right. If the total mitigation requirement for a project is .25 or more FTEs, a cash-in-lieu payment shall require City Council approval, pursuant to Section 26.470.110.C.
 - f. Affordable housing units shall be approved pursuant to Paragraph 26.470.100.D, Affordable housing, and be restricted to a Category 4 rate as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation.
 - g. Each unit provided shall be designed such that the finished floor level of fifty percent (50%) or more of the unit's net livable area is at or above natural or finished grade, whichever is higher. This dimensional requirement may be varied through Special Review, Pursuant to Chapter 26.430
- 8) Affordable housing units that are being provided absent a requirement ("voluntary units") may be deed-restricted at any level of affordability, including residential occupied (RO).

on the property. An existing deed restricted unit does not need to re-record a deed restriction.

- b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area ~~acceptable~~ pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit. The mitigation unit must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
- c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
First 4,500 square feet (Floor Area)	.16 employees per 1,000 square feet of Floor Area.
Above 4,500 square feet (Floor Area)	.36 employees per 1,000 square feet of Floor Area.
<p>Notes:</p> <ul style="list-style-type: none"> - The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their floor area for one calculation. - An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling. - When redevelopment of a property adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced. - When demolition is proposed, the redevelopment shall be credited the floor area from the demolished residential dwelling unit. Credit from a demolished dwelling unit cannot be allocated to development on a different lot. - The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015. 	

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.100 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

$$3,400 / 1,000 \times .16 = .54$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

Example 2: An existing home of 4,400 square feet of Floor Area is expanded by 250 square feet of Floor Area. The applicant must provide affordable housing mitigation for .07 FTEs, the difference in employee generation of the two house sizes.

$$(4,500 / 1,000 \times .16) + (150 / 1,000 \times .36) - (4,400 / 1,000 \times .16) = .07$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen ~~and subject to~~ the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

C. Multi-Family Residential Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The net increase of Floor Area of an existing free-market multi-family unit or structure, regardless of when the lot was subdivided or legally described and provided demolition does not occur. (When demolition occurs, see Section 26.470.100.E, Demolition or redevelopment of multi-family housing.) This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments established pursuant to Section 26.470.040.
- 2) Affordable housing mitigation requirements for the type of free-market residential development described above shall be as follows. The applicant shall have four options:
 - a. Recording a resident-occupancy (RO), or lower, deed restriction on the dwelling unit(s) being expanded. An existing deed restricted unit does not need to re-record a deed restriction.
 - b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area ~~acceptable pursuant~~ to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit(s). The mitigation unit(s) must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
 - c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
------------------------------	----------------------------

square feet of expansion (Floor Area)	.18 employees per 1,000 square feet of Floor Area
Notes:	
<ul style="list-style-type: none"> - The calculation of the Employment Generation shall be assessed per dwelling unit. Multiple dwelling units do not combine their floor area for one calculation. - When a unit adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced. - When demolition is proposed, please see Section 26.470.100.E – Demolition or Redevelopment of Multi-Family Housing. Projects - The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015. 	

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.050 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Floor Area. The applicant must provide affordable housing mitigation for .09 FTEs.

$$500 / 1,000 \times .18 = .09$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 2: A multi-family unit of 1,400 square feet of Floor Area is expanded by 2,600 square feet of Floor Area. The applicant must provide affordable housing mitigation for .47 FTEs, the difference in employee generation of the two unit sizes.

$$2,600 / 1,000 \times .18 = .47$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen **and subject to** the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

D. Change in use of historic landmark sites and structures. The change of use between

C. Expansion of free-market residential units within a multi-family or mixed-use project. The net livable area expansion of existing free-market residential units within a mixed-use project shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.080. The remodeling or expansion of existing multi-family residential dwellings shall be exempt from growth management as long as no demolition occurs, pursuant to Section 26.470.070.C. Expansion of existing free-market residential units shall not require a development allotment

D. Affordable housing. The development of affordable housing deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.080.

- 1) The proposed units shall be deed-restricted as "for sale" units and transferred to qualified purchasers according to the Aspen/Pitkin County Housing Authority Guidelines. The owner may be entitled to select the first purchasers, subject to the aforementioned qualifications, ~~with approval from the~~ pursuant to the -Aspen/Pitkin County Housing Authority Guidelines. The deed restriction shall authorize the Aspen/Pitkin County Housing Authority or the City to own the unit and rent it to qualified renters as defined in the Affordable Housing Guidelines established by the Aspen/Pitkin County Housing Authority, as amended.

The proposed units may be rental units, including but not limited to rental units owned by an employer or nonprofit organization, if a legal instrument in a form acceptable to the City Attorney ensures permanent affordability of the units. The City encourages affordable housing units required for lodge development to be rental units associated with the lodge operation and contributing to the long-term viability of the lodge.

Units owned by the Aspen/Pitkin County Housing Authority, the City of Aspen, Pitkin County or other similar governmental or quasi-municipal agency shall not be subject to this mandatory "for sale" provision.

E. Demolition or redevelopment of multi-family housing. The City's neighborhoods have traditionally been comprised of a mix of housing types, including those affordable by its working residents. However, because of Aspen's attractiveness as a resort environment and because of the physical constraints of the upper Roaring Fork Valley, there is constant pressure for the redevelopment of dwellings currently providing resident housing for tourist and second-home use. Such redevelopment results in the displacement of individuals and families who are an integral part of the Aspen work force. Given the extremely high cost of and demand for market-rate housing, resident housing opportunities for displaced working residents, which are now minimal, will continue to decrease.

Preservation of the housing inventory and provision of dispersed housing opportunities in Aspen have been long-standing planning goals of the community. Achievement of these goals will serve to promote a socially and economically balanced community, limit the number of individuals who face

units shall be deed-restricted as Category 4 housing, pursuant to the guidelines of the Aspen/Pitkin County Housing Authority. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Paragraph 26.470.100.D, Affordable housing.

When this fifty-percent standard is accomplished, the remaining development on the site may be free-market residential development as long as additional affordable housing mitigation is provided pursuant to Section 26.470.080 – General Requirements, and there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Section 26.470.100, subsection J or K, Residential Development – sixty or seventy percent affordable.

- c. *One-hundred percent affordable housing replacement.* When one-hundred-percent of the free-market multi-family housing units are demolished and are solely replaced with deed-restricted affordable housing units on a site that are not required for mitigation purposes, including any net additional dwelling units, pursuant to Section 26.470.110.D, Affordable Housing; all of the units in the redevelopment are eligible for a Certificate of Affordable Housing Credit, pursuant to Section 26.540 Certificate of Affordable Housing Credit. Any remaining unused free market residential development rights shall be vacated.
2. Requirements for demolishing affordable multi-family housing units: In the event a project proposes to demolish or replace existing deed-restricted affordable housing units, the redevelopment may increase or decrease the number of units, bedrooms or net livable area such that there is no decrease in the total number of employees housed by the existing units. The overall number of replacement units, unit sizes, bedrooms and category of the units shall ~~be reviewed by the~~ comply with the Aspen/Pitkin County Housing Authority Guidelines. and a recommendation forwarded to the Planning and Zoning Commission.
3. Fractional unit requirement. When the affordable housing replacement requirement of this Section involves a fraction of a unit, fee-in-lieu may be provided only upon the review and approval of the City Council, to meet the fractional requirement only, pursuant to Paragraph 26.470.110.C, Provision of required affordable housing via a fee-in-lieu payment.
4. Location requirement. Multi-family replacement units, both free-market and affordable, shall be developed on the same site on which demolition has occurred, unless the owner shall demonstrate and the Planning and Zoning Commission determines that replacement of the units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.

When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined

When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined acceptable to the Planning and Zoning Commission, or may replace the units by extinguishing the requisite number of affordable housing credits, pursuant to Sec. 26.540, Certificates of Affordable Housing Credit. ~~A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.~~

When calculating the number of credits that must be extinguished, the most restrictive replacement measure shall apply. ~~So, f~~For example, for an applicant proposing to replace one 1,000 square foot three-bedroom unit at the 50% rate using credits, the following calculations shall be used:

- 50% of 1,000 square feet = 500 square feet to be replaced. At the Code mandated rate of 1 FTE per 400 square feet of net livable area, this requires 1.25 credits to be extinguished; or
- A three-bedroom unit = 3.0 FTE's. 50% of 3.0 FTE's = 1.50 credits to be extinguished.

Therefore, the applicant must extinguish 1.50 credits to replace a three-bedroom unit at the 50% rate. The credits to be extinguished would be Category 4 credits.

5. Timing requirement. Any replacement units required to be deed-restricted as affordable housing shall be issued a certificate of occupancy, according to the Building Department, and be available for occupancy at the same time as, or prior to, any redeveloped free-market units, regardless of whether the replacement units are built on site or off site.
6. Redevelopment agreement. The applicant and the City shall enter into a redevelopment agreement that specifies the manner in which the applicant shall adhere to the approvals granted pursuant to this Section and penalties for noncompliance. The agreement shall be recorded before an application for a demolition permit may be accepted by the City.
7. Growth management allotments. The existing number of free-market residential units, prior to demolition, may be replaced exempt from growth management, provided that the units conform to the provisions of this Section. The redevelopment credits shall not be transferable separate from the property unless permitted as described above in Subparagraph 4, Location requirement.
8. Exemptions. The Community Development Director shall exempt from the procedures and requirements of this Section the following types of development involving Multi-Family Housing Units. An exemption from these replacement requirements shall not exempt a development from compliance with any other provisions of this Title:
 - a. The replacement of Multi-Family Housing Units after non-willful demolition such as a flood, fire, or other natural catastrophe, civil commotion, or similar event not purposefully caused by the land owner. The Community Development Director may

The following types of development shall be approved, approved with conditions or denied by the City Council, pursuant to Section 26.470.060, Procedures for review, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.080. Except as noted, all City Council growth management approvals shall be deducted from the respective annual development allotments.

A. Multi-year development allotment. The City Council, upon a recommendation from the Planning and Zoning Commission, shall approve, approve with conditions or deny a multi-year development allotment request based on the following criteria:

- 1) A project is required to meet at least five (5) of the following criteria.
 - a. The proposal exceeds the minimum affordable housing required for a standard project.
 - b. The proposed project represents an excellent historic preservation accomplishment. A recommendation from the Historic Preservation Commission shall be considered for this standard.
 - c. The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors, families, etc.). ~~A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.~~
 - d. The proposal minimizes impacts on public infrastructure by incorporating innovative, energy-saving techniques. Recommendations from relevant departments shall be considered for this standard. For example, if an applicant proposed an innovative design related to the stormsewer system, a recommendation from the Engineering Department shall be considered.
 - e. The proposal minimizes construction impacts beyond minimum requirements both during and after construction. A recommendation from the Engineering and Building Departments shall be considered for this standard.
 - f. The proposal maximizes potential public transit usage and minimizes reliance on the automobile by exceeding the requirements in Section 26.515, Off-Street Parking and Mobility. A recommendation from the Transportation and Engineering Departments shall be considered for this standard.
 - g. The proposal exceeds minimum requirements of the Efficient Building Code or for LEED certification, as applicable. A recommendation from the Building Department shall be considered for this standard.
 - h. The proposal represents a desirable site plan and an architectural design solution.
 - i. The proposal promotes opportunities for local businesses through the provision of Alley stores or second-tier commercial space.
- 2) The project complies with all other provisions of the Land Use Code and has obtained all necessary approvals from the Historic Preservation Commission, the Planning and Zoning Commission and the City Council, as applicable.
- 3) The Community Development Director shall be directed to reduce the applicable annual development allotments, as provided in Section 26.470.120, in subsequent years as determined appropriate by the City Council.

B. Provision of required affordable housing units outside City limits. The provision of affordable housing, as required by this chapter, with units to be located outside the City boundary, upon a recommendation from the Planning and Zoning Commission, shall be approved, approved with conditions or denied by the City Council based on the following criteria:

- 1) The off-site housing is within the Aspen Urban Growth Boundary.
- 2) The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors and families). ~~A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.~~
- 3) The applicant has received all necessary approvals from the governing body with jurisdiction of the off-site parcel.

City Council may accept any percentage of a project's total affordable housing mitigation to be provided through units outside the City's jurisdictional limits, including all or none.

C. Provision of required affordable housing via a fee-in-lieu payment. The provision of affordable housing in excess of 0.10 Full-Time Equivalents (FTEs) via a fee-in-lieu payment, upon a recommendation from the Planning and Zoning Commission shall be approved, approved with conditions or denied by the City Council based on the following criteria:

- 1) The provision of affordable housing on site (on the same site as the project requiring such affordable housing) is impractical given the physical or legal parameters of the development or site or would be inconsistent with the character of the neighborhood in which the project is being developed.
- 2) The applicant has made a reasonable good-faith effort in pursuit of providing the required affordable housing off site through construction of new dwelling units, the deed restriction of existing dwelling units to affordable housing status, or through the purchase of affordable housing certificates.
- 3) The applicant has made a reasonable good-faith effort in pursuit of providing the required affordable housing through the purchase and extinguishment of Certificates of Affordable Housing Credit.
- 4) The proposal furthers affordable housing goals, and the fee-in-lieu payment will result in the near-term production of affordable housing units.

The City Council may accept any percentage of a project's total affordable housing mitigation to be provided through a fee-in-lieu payment, including all or none.

D. Reconstruction rights shall be limited to reconstruction on the same parcel or on an adjacent parcel under the same ownership.

E. Residential redevelopment credits may be converted to lodge redevelopment credits by right. The conversion rate shall be three (3) lodge units per each one (1) residential unit. This is a one-way conversion, and lodge credits may not be converted to residential credits.

26.470.150. Amendment of a growth management development order.

A. Insubstantial amendment. An insubstantial amendment to an approved growth management development order may be authorized by the Community Development Director if:

- 1) The change conforms to all other provisions of the Land Use Code and does not exceed approved variations to the residential design standards, require an amendment to the commercial design review approval or such variations or amendments have been approved.
- 2) The change does not alter the number, size, type or deed restriction of the proposed affordable housing units; ~~subject to compliance with or those changes have been accepted by the Aspen/Pitkin County Housing Authority~~ Guidelines.
- 3) The change is limited to technical or engineering considerations discovered prior to or during actual development that could not reasonably be anticipated during the review process or any other minor change that the Community Development Director finds has no substantial effect on the conditions and representations made during the original project review.

B. Substantial amendment. All other amendments to an approved growth management development order shall be reviewed pursuant to the terms and procedures of this Chapter. Allotments granted shall remain valid and applied to the amended application, provided that the amendment application is submitted prior to the expiration of vested rights. Amendment applications requiring additional allotments or allotments for different uses shall obtain those allotments pursuant to the procedures of this Chapter. Any new allotments shall be deducted from the growth management year in which the amendment is submitted.

26.470.160. Appeals.

A. Appeal of adverse determination by Community Development Director. An appeal made by an applicant aggrieved by a determination made by the Community Development Director on an application for administrative review shall be to the Planning and Zoning Commission. The appeal procedures set forth at Chapter 26.316 shall apply. The Planning and Zoning Commission may reverse, affirm or modify the decision or determination of the Community Development Director based upon the application submitted to the Community Development Director and the record established by the Director's review. The decision of the Planning and Zoning Commission shall constitute the final administrative action on the matter.

B. Appeal of adverse determination by Planning and Zoning Commission. An appeal made by an applicant aggrieved by a determination made by the Planning and Zoning Commission on an

26.520

ACCESSORY DWELLING UNITS AND CARRIAGE HOUSES

Sections:

26.520.010	Purpose
26.520.020	General
26.520.030	Authority
26.520.040	Applicability
26.520.050	Design standards
26.520.060	Calculations and measurements
26.520.070	Deed restrictions and enforcement
26.520.080	Procedure
26.520.090	Amendment of an ADU or carriage house development order

26.520.010 Purpose

The purpose of the accessory dwelling unit (ADU) and carriage house program is to promote the long-standing community goal of socially, economically and environmentally responsible development patterns which balance Aspen *the resort* and Aspen *the community*. Aspen values balanced neighborhoods and a sense of commonality between local working residents and part-time residents. ADUs and carriage houses represent viable housing opportunities for working residents and allow employees to live within the fabric of the community without their housing being easily identifiable as “employee housing.”

ADUs and carriage houses support local Aspen businesses by providing an employee base within the City and providing a critical mass of local residents important to preserving Aspen's character. ADUs and carriage houses allow second homeowners the opportunity to hire an on-site caretaker to maintain their property in their absence. Increased employee housing opportunities in close proximity to employment and recreation centers is also an environmentally preferred land use pattern, which reduces automobile reliance.

Detached ADUs and carriage houses emulate a historic development pattern and maximize the privacy and livability of both the ADU or carriage houses and the primary unit. Detached ADUs and carriage houses are more likely to be occupied by a local working resident, furthering a community goal of housing the workforce.

Aspen desires occupied ADUs and carriage houses; therefore, detached ADUs and carriage houses which are deed restricted as "for sale" units, according to the Aspen/Pitkin County Housing Authority Guidelines, as amended, and sold according to the procedures established in the guidelines, provide for certain floor area and affordable housing credit incentives.

(Ord. No. 53-2003, §2; Ord. No. 35-2015, §1)

26.520.020 General

Accessory dwelling units and carriage houses are separate dwelling units incidental and subordinate in size and character to the primary residence, located on the same parcel, and which may be rented or sold to a local working resident as defined by the Aspen/Pitkin County Housing Authority [Guidelines](#) and as limited by this Chapter. A primary residence may have no more than one (1) ADU or carriage house. An ADU or carriage house may not be accessory to another ADU or carriage house. A detached

9. All ADUs and carriage houses shall be registered with the Housing Authority and the property shall be deed restricted in accordance with Section 26.520.070, Deed restrictions and enforcement. This standard may not be varied.

(Ord. 53-2003, § 2; Ord. No. 35-2015, §1)

26.520.060 Calculations and measurements

A. Floor area. ADUs and carriage houses are attributed to the maximum allowable floor area for the given property on which they are developed, pursuant to Section 26.575.020, Calculations and Measurements.

B. Net livable square footage. ADUs and carriage houses must contain certain net livable floor area, unless varied through Special Review. The calculation of net livable area differs slightly from the calculation of floor area inasmuch as it measures the interior dimensions of the unit. Please refer to Section 26.575.020 – Calculations and Measurements.

(Ord. No. 53-2003, § 2; Ord. No. 35-2015, §1)

26.520.070 Deed restrictions and enforcement

A. Deed restrictions. At a minimum, all properties containing an ADU or a carriage house shall be deed restricted in the following manner:

- The ADU or carriage house shall be registered with the Aspen/Pitkin County Housing Authority.
- Any occupant of an ADU or carriage house shall be qualified as a local working resident according to the current Aspen/Pitkin County Housing Authority Guidelines, as amended.
- The ADU or carriage house shall be restricted to lease periods of no less than six (6) months in duration or as otherwise required by the current Aspen/Pitkin County Housing Authority Guidelines. Leases must be recorded with the Aspen/Pitkin Housing Authority.

A detached and permanently affordable Accessory Dwelling Unit or Carriage House qualifying a property for a floor area exemption, pursuant to Section 26.575.020 – Calculations and Measurements, shall be deed restricted as a "for sale" affordable housing unit and conveyed to a qualified purchaser, according to the Aspen/Pitkin County Housing Authority Guidelines, as amended and according to the following sales price limitations:

- Accessory dwelling units from 300 to 500 net livable square feet – Category 3 or lower.
- Accessory dwelling units from 501 to 800 net livable square feet – Category 4 or lower.
- Carriage houses from 800 to 1,000 net livable square feet – Category 5 or lower.
- Carriage houses from 1,001 to 1,200 net livable square feet – Category 6 or lower.

Category sales prices shall be those specified in the Aspen/Pitkin County Housing Authority Guidelines, as amended. The initial developer may select the first qualified purchaser of the unit. Subsequent conveyances shall be according to the lottery sales procedures specified in the Aspen/Pitkin County Housing Authority Guidelines, as amended.

A detached and permanently affordable Accessory Dwelling Unit or Carriage House deed restricted as a “for-sale” affordable housing unit, as described above, and which is not required for mitigation purposes, shall be eligible to receive a Certificate of Affordable Housing Credit pursuant to Chapter 26.540.

Accessory dwelling units deed restricted to mandatory occupancy in exchange for a floor area bonus, prior to the adoption of Ordinance No. 46, Series of 2001, shall be continuously occupied by a local working resident, as defined by the Aspen/Pitkin County Housing Authority Guidelines, for lease periods of six (6) months or greater, unless the owner is granted approval to remove that restriction pursuant to Subsection 26.520.090.B, Removal of Mandatory Occupancy Deed Restriction.

The Aspen/Pitkin County Housing Authority shall provide a standard form for recording accessory dwelling unit or carriage house deed restrictions. The deed restriction shall be recorded with the County Clerk and Recorder prior to a Certificate of Occupancy being issued. The reception number associated with the recordation shall be noted in the building permit file.

B. Enforcement. The Aspen/Pitkin County Housing Authority or its designee, shall enforce the recorded deed restriction between the property owner and Aspen/Pitkin County Housing Authority.

(Ord. No. 53-2003, § 2; Ord. No. 35-2015, §1)

26.520.080 Procedure

A. General. Pursuant to Section 26.304.020, Pre-Application Conference, applicants are encouraged to meet with a City Planner of the Community Development Department to clarify the requirements of the ADU and carriage house program.

A development application for an ADU or carriage house shall include the requisite information and materials, pursuant to Section 26.304.030, Application and fees. In addition, the application shall include scaled floor plans and elevations for the proposed ADU or carriage house. The application shall be submitted to the Community Development Department.

Any bandit dwelling unit (a.k.a. pirate unit) which can be demonstrated to have been in existence on or prior to the adoption of Ordinance No. 44, Series of 1999, and which complies with the requirements of this Chapter may be legalized as an accessory dwelling unit, if it meets the health and safety requirements of applicable building codes, as determined by the Chief Building Official. No retroactive penalties or assessments shall be levied against any pirate or unit upon legalization.

After a development order has been issued for an ADU or carriage house, a building permit application may be submitted in conformance with Section 26.304.075, Building permit.

B. Administrative review. In order to obtain a development order for an ADU or carriage house, the Community Development Director shall find the ADU or carriage house in conformance with the criteria for administrative approval. If an application is found to be inconsistent with these criteria, in whole or in part, the applicant may either amend the application or apply for a Special Review to vary the design standards pursuant to Subsection D, below.

An application for an ADU or carriage house may be approved, approved with conditions or denied by the Community Development Director based on the following criteria:

1. The proposed ADU or carriage house meets the requirements of Section 26.520.050, Design standards.
2. The applicable deed restriction for the ADU or carriage house has been accepted by the Aspen/Pitkin County Housing Authority, and the deed restriction is to be recorded prior to issuance of a Certificate of Occupancy for the ADU or carriage house.

C. Appeal of Director's determination. An applicant aggrieved by a decision made by the Community Development Director regarding this Chapter may appeal the decision to the Administrative Hearing Officer, pursuant to Chapter 26.316.

D. Special Review. An application requesting a variation of the ADU and carriage house design standards shall be processed as a Special Review in accordance with the common development review procedures set forth in Chapter 26.304. The Special Review shall be considered at a public hearing for which notice has been posted, mailed, and published pursuant to Section 26.304.060.E.3.

Review is by the Planning and Zoning Commission. If the property is an historic landmark, on the Inventory of Historic Sites and Structures or within a Historic Overlay District, the Historic Preservation Commission shall consider the Special Review.

A Special Review for an ADU or Carriage House may be approved, approved with conditions or denied based on conformance with the following criteria:

1. The proposed ADU or carriage house is designed in a manner which promotes the purpose of the ADU and carriage house program, promotes the purpose of the Zone District in which it is proposed and promotes the unit's general livability.
2. The proposed ADU or carriage house is designed to be compatible with and subordinate in character to, the primary residence considering all dimensions, site configuration, landscaping, privacy and historical significance of the property.

E. Inspection and acceptance. Prior to issuance of a certificate of occupancy for an ADU or carriage house, the Aspen/Pitkin County Housing Authority or the Chief Building Official, shall inspect the ADU or carriage house for compliance with the design standards. Any unapproved variations from these standards shall be remedied or approved pursuant to this Chapter prior to issuance of a certificate of occupancy or certificate of compliance.

(Ord. 53-2003, § 2; Ord. No. 35-2015, §1)

26.520.090 Amendment of an ADU or Carriage House Development Order

A. Insubstantial amendment. An insubstantial amendment to an approved development order for an accessory dwelling unit or carriage house may be authorized by the Community Development Director if:

1. The change is in conformance with the design standards, Section 26.520.050, or does not exceed approved variations to the design standards; and
2. The change does not alter the deed restriction for the ADU or carriage house or the alteration to the deed restriction ~~has been approved by~~ consistent with the Aspen/Pitkin County Housing Authority Guidelines.

B. Removal of Mandatory Occupancy Deed Restriction. An amendment application that proposes to remove a mandatory occupancy ADU deed restriction placed on the property prior to adoption of Ordinance No. 46, Series of 2001, may be approved by the Community Development Director if all of the following criteria are met:

1. The mandatory occupancy deed restriction on the ADU is replaced with the minimum ADU deed restriction allowing voluntary occupancy; and
2. The applicant shall either:
 - a) Develop a deed restricted affordable housing unit on a site that is not otherwise required to contain such a unit or convert an existing free-market unit to affordable housing status. The replacement affordable housing unit shall be within the Aspen infill area, shall be a one-bedroom or larger sized unit, shall ~~be accepted by~~ meet the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements), shall be deed restricted as a Category 2, or lower, for-sale unit according to the Aspen/Pitkin County Housing Guidelines, as amended, and shall be transferred to a qualified purchaser through the Aspen/Pitkin County Housing Authority sales process; or,
 - b) Extinguish a Certificate of Affordable Housing Credit, pursuant to Chapter 26.540, for 1.5 full-time equivalents (FTEs). The Certificate shall be Category 2 or lower.
3. The property granted the bonus floor area shall be considered to contain a legally created nonconforming structure and subject to the provisions of Chapter 26.312 – Nonconformities.

C. Removing an ADU/Carriage House. An amendment application that proposes to physically remove an ADU or Carriage House from a property and vacate the deed restriction may be approved by the Community Development Director if all of the following criteria are met. To remove or decommission a Mandatory Occupancy ADU, the requirements of 26.520.090.B must first be met prior to complying with this subsection.

For an ADU or Carriage House developed prior to the adoption of Ordinance No. 35 Series 2015:

1. The applicant shall provide affordable housing mitigation for .38 full-time equivalents (FTEs). Mitigation shall be provided at a Category 2 rate prior to issuance of any permit required to accomplish the decommissioning or removal of the unit. This may be provided through extinguishment of a Certificate of Affordable Housing Credit (See Chapter 26.540 – Certificates of Affordable Housing Credit) or by providing a fee-in-lieu payment according to the rates specified in the current Aspen/Pitkin County Housing Authority Guidelines, as amended from time to time. *(Commentary – The .38 figure reflects a typical ADU being a studio or one-bedroom unit housing 1.5 FTEs with an approximate 25% occupancy. $1.5 \times .25 = .375$, rounded to .38.)*
2. The physical changes necessary to remove the ADU/Carriage House have been accomplished and issued a final inspection by the Chief Building Official. (Building permits are required.) Once this has been accomplished, a release of deed restriction, acceptable to the City Attorney, shall be completed and filed with the Pitkin County Clerk and Recorder.

For an ADU or Carriage House developed after the adoption of Ordinance No. 35, Series 2015 or for an ADU or Carriage House developed prior to this date which the applicant can demonstrate was not

2. Lighting plans submitted as a part of a building permit application for a commercial or multi-family structure shall be reviewed administratively by the Community Development Director. The Director shall have the authority to refer an application to the Planning and Zoning Commission or the Historic Preservation Commission if deemed appropriate.
3. Appeals. Any appeals related to decisions regarding outdoor lighting shall be made to the Board of Adjustment compliant with the procedures in the Appeals Chapter 26.316 of this Title.

(Ord. No. 47-1999, § 1; Ord. No. 52-2003, §§ 16—20)

26.575.160 Dormitory

Occupancy of a dormitory unit shall be limited to no more than eight (8) persons. Each unit shall provide a minimum square footage per person in accordance with the Aspen/Pitkin County Housing Authority Guidelines, as amended. Standards for use and design of such facilities shall be established ~~by-pursuant to~~ the Aspen/Pitkin County Housing Authority Guidelines. A dormitory unit shall be considered the same as a multi-family unit for all requirements of the Land Use Code other than permitted and conditional uses.

(Ord. No. 46-2015, § 23)

26.575.170 Fuel storage tanks

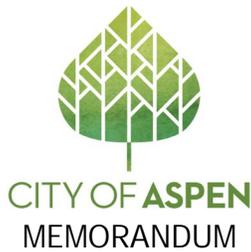
All fuel storage tanks shall be completely buried beneath the surface of the ground except that above ground storage tanks may be approved as conditional uses in the Service/Commercial /Industrial and Public Zone Districts.

26.575.180 Required Access

This section shall apply to new development and redevelopment, remodeling, or expansion following demolition. Redevelopment, remodeling, or expansion that has not triggered demolition shall comply with the provisions of this section to the greatest extent practical.

A. Elevators. All commercial, mixed-use, and lodging buildings which contain an elevator shall provide elevator access to all basement and upper building levels, units and commercial tenant spaces in a manner that meets the requirements of the International Building Code Chapters 10 and 11 as adopted and amended by the City of Aspen. Alleyways (vehicular rights-of-way) may not be utilized as pathways (pedestrian rights-of-way) to meet the requirements of the International Building Code. Additional elevators may be reserved for exclusive use or to serve less than all floors or all units. An applicant unable to meet these requirements may request a variation by the Planning and Zoning Commission or Historic Preservation Commission through Commercial Design Review

B. Delivery Areas. All commercial, mixed-use, and lodging buildings shall provide a delivery area. The delivery area shall be located along the alley if an alley adjoins the property. The delivery area shall be accessible to all building levels and all commercial tenant spaces of the building in a manner that meets the requirements of the International Building Code Chapters 10 and 11 as adopted and amended by the City of Aspen. All non-ground floor commercial spaces shall have access to an elevator or dumbwaiter for delivery access. Alleyways (vehicular rights-of-way) may not be utilized as pathways (pedestrian rights-of-way) to meet the requirements of the International Building Code. Any truck loading facility shall be an integral component of the building. Shared facilities are highly



TO: Mayor Skadron and City Council

FROM: Phillip Supino, Principal Long-Range Planner

THRU: Jessica Garrow, Community Development Director

RE: Transportation and Parking Management Code Amendments
Ordinance 13, Series of 2019

DATE: May 20, 2019

SUMMARY:

The attached Ordinance amends the Transportation and Parking Management section of the Land Use Code. The proposed amendments revise terminology, coordinate regulations, and clarify processes in the section.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed Ordinance.

LAND USE REQUESTS AND REVIEW PROCEDURES:

This meeting is to review potential changes to the City's Land Use Code. Pursuant to Land Use Code Section 26.310, City Council is the final review authority for all code amendments.

All code amendments are subject to a three-step process. This is the third step in the process:

1. Public Outreach
2. Policy Resolution by City Council indicating if an amendment should be pursued
3. Public Hearings on Ordinance outlining specific code amendments.

BACKGROUND:

Community Development staff began developing amendments to the Parking section of the Land Use Code with a Council work session in January 2018. In support of these code amendments, Council unanimously passed Policy Resolution 20, Series 2018. This policy resolution directed the Community Development Department to pursue amendments to the Land Use Code. For reference, it is included as Exhibit D.

The current Parking section of the Land Use Code was re-written during the 2016-2017 moratorium, combining Off Street Parking requirements with Transportation Mitigation requirements. At the time, minor amendments were anticipated to ensure the section is internally consistent. The proposed follow-up amendments to the Parking section ensure the code provides clear standards and processes for development and delivers on Council's policy goals. During the moratorium, staff contracted with Nelson-Nygaard and ReGeneration Development Strategies, both leaders in the parking and transportation field, to assist in

development of new parking regulations. Since 2018, staff has continued working with ReGeneration on clarifications to the post-moratorium parking regulations.

Staff formed an expert steering committee of local designers, builders, and architects to support the miscellaneous code amendment process, including review of the parking section of the Land Use Code. Staff and the focus group worked through early 2019 developing comprehensive re-writes of the Calculations & Measurements and Parking sections of the Land Use Code.

While a majority of that work has been tabled due to 2019 work program constraints, it provided the basis for the targeted code amendments proposed in Ordinance 13. Staff presented these changes in draft ordinance form to Council at the May 6th work session. At that work session, Council supported the proposed amendments and directed staff to return on May 13th for first reading.

QUESTIONS FROM WORK SESSION:

At the May 6th work session, Council requested clarification on the definition of Parking Space, Accessory. The term refers to the management of an on-site parking space associated with a specific development. Accessory spaces are managed, typically through signage and enforcement, to provide parking access to residents, tenants, and visitors to the site at specific times of day. For example, a space may be signed for loading between 9 a.m. and 5 p.m. and resident parking for the rest of the day. This is distinct from a space which may, for example, be reserved for the exclusive use of a tenant or for loading. The management scheme would allow for the flexible use of parking spaces on a site, limiting the need for potentially redundant tenant and loading parking, and reducing the area of a development site consumed by parking.

DISCUSSION:

The draft amendments included in Ordinance 13 are based on the work of staff, consultants and the focus group over the course of 18 months. The scope of the amendments for the Parking code is limited to:

- coordination of standards within the section, and
- clarification of language, and
- improvements to formatting.

No proposed amendment would alter calculations, methodologies, or development rights. Key amendments in the ordinance are outlined below and in the redline version of the ordinance included as Exhibit C.

Definitions - 26.515.010

A handful of the definitions at the beginning of the section are proposed for amendment. The amendments will ensure coordination with terms throughout the section, the Land Use Code generally, as well as the Transportation Impact Analysis (TIA) standards. "Parking Space, Guest/Loading" was added to the definitions to provide clearer standards for this type of parking. Finally, "Mobility Commitments" was changed to "Mobility Measures" and "Surplus Mobility Measures" was added. These changes better coordinate the terminology associated with the relationship between the parking and TIA regulations.

Applicability - 26.515.020

Language was added to this section to make the threshold clear as to which projects are subject to the regulations in the section. This addition adds clarity for staff and applicants but does not change the types of projects or properties subject to the regulations

Meeting Parking Requirements - 26.515.050

This section is highlighted because it has been significantly reformatted. None of the regulations have been altered. The contents have been re-organized to better illustrate the relationship between different parking configurations (sub-bullet #2) and the four ways in which development can meet parking requirements.

Reconfiguration of Parking - 26.515.040.C & 26.515.060.B.2

This is new code language addressing an omission from the current version of the parking code. Since adopting the parking regulations during the moratorium, staff has received numerous inquiries regarding the process for assessing the removal or reconfiguration of parking that is not tied to a larger land use application. Without a land use application, the current code does not explicitly provide a process for making sure that a site meets its parking and mobility obligations when considering make changes to on-site parking and mobility. In lieu of an explicit process, staff developed a policy to address these scenarios.

The new language memorializes that staff policy in the regulations. It states that, when no land use application is required, review of the proposed parking changes may be included in building permit review or an administrative review process. Should the applicant propose to remove parking or mobility measures, they may choose from one of the four options outlined in 26.515.050 "Meeting Parking Requirements" to mitigate for that change. Adding this language provides clarity to staff and applicants on how to process such requests, where the current code is silent.

Off-Street Parking Requirements - 26.515.070

The Engineering Standards allows for sites with more than 15 parking spaces to provide up to 25% of the total parking on-site as compact parking spaces. This language was added to the Land Use Code to provide clarity to staff and applicants and ensure coordination between regulations.

PUBLIC OUTREACH:

Since November 2017, Planning staff has met with the 11-member focus group, including representatives from P&Z and HPC, to receive direction and technical support on the regulations originally proposed for amendment in 2018. While the scope of the work undertaken with the focus group was broader than the current, targeted parking amendments, the proposed amendments were addressed in the work of the focus group. Public outreach has also been conducted via the Community Development newsletter and in conjunction with the Policy Resolution process.

Prior to the May 6th work session and May 13th first reading, staff provided the draft ordinance to the focus group for comment. Staff met with and responded to comments from focus group members in advance of the first and second reading hearings.

STAFF RECOMMENDATION:

Staff recommends adoption of the attached Ordinance.

RECOMMENDED MOTION (ALL MOTIONS ARE PROPOSED IN THE AFFIRMATIVE):

"I move to approve Ordinance No. 13 Series of 2019, amending the Transportation and Parking Management section of the Land Use Code on first reading."

ATTACHMENTS:

Exhibit A: Staff Findings

Exhibit B: Ordinance 13, Series 2019

Exhibit C: Parking Amendments Draft - Redline Version

Exhibit D: Resolution 20, Series 2018 - Policy Resolution

ORDINANCE No. 13
Series of 2019

**AN ORDINANCE OF THE ASPEN CITY COUNCIL ADOPTING CODE
AMENDMENTS TO LAND USE CODE CHAPTER 26.515, TRANSPORTATION AND
PARKING MANAGEMENT.**

WHEREAS, in accordance with Sections 26.208 and 26.310 of the City of Aspen Land Use Code, the City Council of the City of Aspen directed the Community Development Department to craft code amendments to related to transportation and parking management regulations; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), beginning in 2017 the Community Development Department conducted Public Outreach with the Planning & Zoning Commission, City Council, and development community stakeholders regarding amendments to the transportation and parking management regulations; and,

WHEREAS, the Community Development Department contracted with ReGeneration Development Services for parking regulation consulting services in support of this code amendment; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on February 26, 2018, the City Council approved Resolution No. 20, Series 2019, by a five to zero (5 – 0) vote, requesting code amendments to the Land Use Code; and,

WHEREAS, Aspen Area Community Plan policy III.1 (Transportation) calls for the reduction of vehicle trips by user groups; and,

WHEREAS, Aspen Area Community Plan policy III.2 (Transportation) requires that development minimize adverse impacts to transportation systems; and,

WHEREAS, the Community Development Director has recommended approval of the proposed amendments to the City of Aspen Land Use Code; and,

WHEREAS, the Aspen City Council finds that the amendments meet or exceed all applicable standards pursuant to Chapter 26.310 and that the approval of the amendments is consistent with the goals and elements of the Aspen Area Community Plan; and,

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health safety and welfare; and,

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN COLORADO THAT:

Section 1: Chapter 26.515, Transportation and Parking Management, shall be deleted and replaced with the following:

**Chapter 26.515
TRANSPORTATION AND PARKING MANAGEMENT**

Sections:

26.515.010	Purpose and Definitions
26.515.020	Applicability
26.515.030	Transportation Mitigation
26.515.040	Parking Requirements
26.515.050	Meeting Parking Requirements
26.515.060	Procedures for Review
26.515.070	Off-Street Parking Requirements
26.515.080	Special Review Standards
26.515.090	Cash-in-lieu for Parking Requirements
26.525.100	Amendments
26.515.110	Appeals

26.515.010. Purpose

This Chapter establishes unified transportation and mobility standards to promote the city's policies relating to mobility, access to employment opportunities, and sustainability. This chapter implements policies from the Aspen Area Community Plan to:

- Limit vehicle trips into Aspen to 1993 levels, and reduce peak-hour vehicle-trips to at or below 1993 levels;
- Use Transportation Demand Management tools to accommodate additional person trips in the Aspen Area;
- Maintain the reliability and improve the convenience of City of Aspen transit services;
- Expand and improve bicycle parking and storage within the Urban Growth Boundary;
- Improve the convenience, safety, and quality of experience for bicyclists and pedestrians on streets and trails;
- Require development to mitigate its transportation impacts; and
- Develop a strategic parking plan that manages the supply of parking and reduces the adverse impacts of the automobile.

This Chapter establishes a variety of ways for property owners and developers to mitigate their impacts on the transportation network. As new development and growth occur, increased burdens on the transportation system can make it more difficult for the City to meet its transportation and air quality goals. To the extent that increased travel demand can shift away

from automobile dependence, development and growth can be compatible with, and even support, these goals.

To promote this shift in travel behavior, the City has transformed its approach to parking requirements to focus on the promotion and expansion of mobility options, including more walkable development patterns and a more efficient parking system, as well as the provision of public and development-based mobility resources. This will directly improve the travel experience and quality of life within growth areas, while helping to maintain the City's transportation-system and air-quality standards.

This is accomplished through a new integrated approach, which incorporates the City's Transportation Impact Analysis (TIA) Guidelines with Off-Street Parking Requirements. Where the TIA serves to evaluate the potential adverse effects of proposed projects on Aspen's transportation systems, the off-street parking regulations focus on on-site mitigation needs resulting from the provision of parking.

Applicants will use a simplified, two-tiered process that:

1. Determines the project's TIA applicability and calculates the project's resulting "parking requirement," and
2. Provides a Mobility Plan that includes the applicant's parking and mobility mitigation requirements, which includes the provision of parking, utilization of cash-in-lieu, and/or provision mobility options, including TIA mitigations if applicable.

The City then reviews the project's mitigations for parking and mobility together as part of the project's land use application.

A. Adoption of Transportation Impact Analysis (TIA) Guidelines

Pursuant to the powers and authority conferred by the Charter of the City, there is hereby adopted and incorporated herein by reference as fully set forth those standards contained in the City of Aspen's Transportation Impact Analysis Guidelines, as may be amended, updated and expanded from time to time by City Council Resolution (referred to in this Code as the "TIA Guidelines"). At least one (1) copy of the TIA Guidelines shall be available for public inspection at the Community Development, Engineering, and Transportation Departments.

B. Definitions. As used in this Section, the following terms shall be defined as follows:

Mobility Measures. Pre-approved mobility measures included in the Mobility Plan as part of a development application. These include the Transportation Demand Management (TDM) and/or Multimodal Level of Service (MMLOS) Mitigation Tools prescribed by the TIA, defined as follows:

- Transportation Demand Management (TDM) Tools, which are strategies and policies to reduce travel demand, particularly by single-occupancy vehicles, and

- Multi-Modal Level of Service (MMLOS) Tools, which are improvements to transportation service quality for travelers using a variety of modes including pedestrians, bicyclists, and transit passengers.

Mobility Plan. A complete mitigation plan for a proposed development's transportation and parking system impacts.

Parking Maximum. The maximum number of parking spaces provided on-site for a designated use before triggering compliance with shared parking requirements.

Parking Minimum. The minimum number of parking spaces required on-site for a designated use.

Parking Requirement. The sum of a project's required Parking Units, as provided in Section 26.515.020.C.2.

Parking Space, Accessory. A parking space that is managed to limit access to individuals engaged with on-site uses (residents, tenants, and their guests/customers), but are shared between all on-site land uses across different peaks in service throughout a 24-hour period.

Parking Space, Guest/Loading. A parking space that is managed to provide 24-hour access to a development for guests, deliveries and loading to the public, service providers, and other non-resident visitors to a development on a non-permanent basis.

Parking Space, Public. A parking space that is managed to provide at least 12 hours of public use in any 24-hour period, with approved signage to effectively identify these hours of public access.

Parking Space, Priced. A parking space – whether reserved, accessory, or public – that is priced comparable to market rates at all times of operation.

Parking Space, Municipal. A parking space that is provided within City of Aspen facilities, or directly managed by the City of Aspen, whether located in a private or City-owned parking facility.

Parking Space, Reserved. A parking space that is managed to limit access to specified individuals or specific on-site land uses.

Parking, Shared. Parking that is shared between multiple, distinct land uses, on the same site or between proximate sites, to make more efficient use of spaces and reduce overall supply needs. Shared parking is required on a development which exceeds its on-site parking provision maximum standard. Shared parking can be used to reduce a project's Parking Requirement. Shared parking may include off-site parking spaces and/or priced parking spaces.

Surplus Mobility Measures. Any additional mitigation credits remaining after TIA-subject projects have met the TIA requirements. TIA subject-projects may apply Surplus mobility measures towards mitigation of Transportation Unit Requirements.

Transportation Impact Analysis (TIA). Technical analysis guidelines for potential transportation impacts generated by development projects within the City of Aspen.

26.515.020. Applicability.

This Section applies to all development and redevelopment which meets the definition of Demolition, or any redevelopment which proposes to reduce on-site parking and/or mobility measures unless otherwise specifically exempted or limited.

A. Determination of Applicability.

The applicant may request a preliminary pre-application conference with staff from the Community Development Department to determine the applicability of the requirements of this Chapter for the proposed development. The following chart details the process for complying with the requirements of this Section through the creation of a mobility plan. The TIA Guidelines are available on the City of Aspen website and may be used to determine whether a project is subject to or exempt from the TIA.

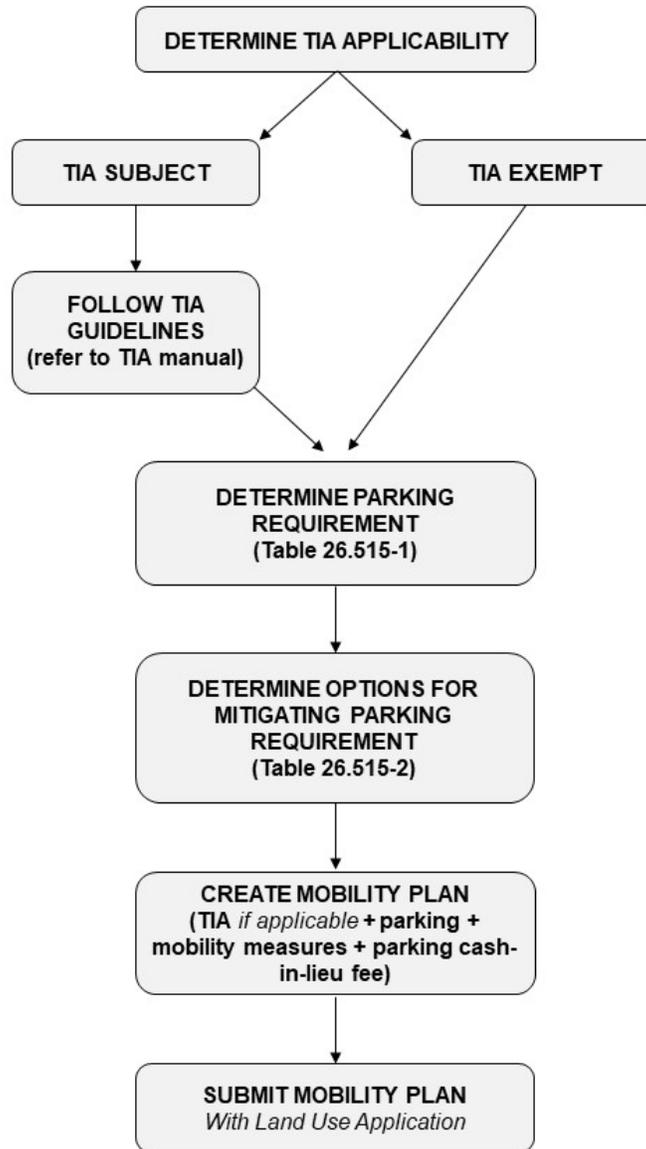


Figure 1: Applicability chart illustrating how to create a Mobility Plan.

C. Requirements. This Chapter requires all applicable development to submit a Mobility Plan, which addresses the following:

- TIA applicability, and
- TIA compliance (as applicable), and
- The provision of parking, and
- Cash-in-lieu of parking (as applicable), and
- Surplus mobility measures (as applicable).

The City then reviews the project’s proposed TIA and Mobility Plan together as part of the project’s Land Use Application.

26.515.030 Transportation Mitigation.

A. General Requirements. All applicable development shall mitigate its projected transportation impacts as provided in this Chapter. Refer to the Transportation Impact Analysis (TIA) for project applicability. Mobility requirements shall be satisfied through use of the following approaches, either alone or in combination

1. **Mobility Measures.** Applicable development must provide Transportation Demand Management (TDM) and Multi-Modal Level of Service (MMLOS) measures as provided for in the Transportation Impact Analysis (TIA) Guidelines. These measures shall be maintained for the life of the development. All requirements shall be incorporated in the project's Development Agreement, pursuant to Chapter 26.490, *Development Documents*.
2. **Surplus Mobility Measures.** Upon satisfaction of TIA requirements, a development's Mobility Plan may include surplus mobility measures, where credit is provided over the minimum TIA requirements and applied towards Parking Requirements outlined in Table 26.515-1. The proportion of surplus mobility measures permitted for a development is outlined in Table 26.515-2.

26.515.040 Parking Requirements.

A. General requirements. All applicable development shall accommodate its projected parking impacts as provided in this Chapter. Parking Requirements shall be satisfied through use of the following either alone or in combination.

1. **Parking Requirement Calculation.** Parking Requirements shall be calculated for each use within a development according to Table 26.515-1.
2. **Parking Provision Minimum.** Applicable development shall satisfy the minimum Parking Provision Requirement, as calculated in Table 26.515-1. Minimum parking provisions may be reduced in combination with mobility measures and transportation system impact fees in accordance with the standards in Table 26.515-2.
3. **Parking Provision Maximum.** To create appropriate site planning and provision of parking, applicable development shall not provide on-site parking in excess of 125% of the Parking Provision Maximum requirement in the form of Reserved Parking Spaces or Accessory Parking Spaces, unless the total number of on-site spaces in excess of 125% of the Parking Provision Maximum are provided as Public Parking Spaces.

Table 26.515-1 Parking Impact Requirement Calculations			
Use	Aspen Infill Area		All Other Areas Parking Requirement (in units)
	<i>Parking Requirement (in units)</i>	<i>Parking Maximum (in units)</i>	
Commercial⁽¹⁾	1 unit /1,000 sf Net Leasable Space	1.25 units / 1,000 sf NLA	3 units per 1,000 sf NLA ⁽²⁾
Residential – Single-Family and Duplex⁽⁴⁾	Lesser of 1 unit per bedroom or 2 units per Dwelling Unit	Greater of 1.25 units per bedroom or 2.5 units per dwelling unit	Lesser of 1 unit per bedroom or 2 per unit
Residential – Accessory Dwelling Units and Carriage Houses^{(3) (4)}	1 unit per unit	1.25 units per unit	1 unit per unit ⁽³⁾
Residential – Multi-Family (as a single use)	1 unit per Dwelling Unit	1.25 units per dwelling unit	Lesser of 1 unit per bedroom or two units per Dwelling Unit
Residential – Multi-Family within a mixed-use building	1 unit per Dwelling Unit	1.25 units per dwelling unit	1 per Dwelling Unit ⁽²⁾
Hotel/Lodge	0.5 units per Key	0.7 units per Key	0.7 units per Key ⁽²⁾
All Other Uses (civic, cultural, public uses, essential public facilities, child care centers, etc.)	Established by Special Review according to the review criteria of Section 26.515.080.	N/A	Established by Special Review according to the review criteria of Section 26.515.080.

Key to Table 26.515-1:

- ⁽¹⁾ = Up to 100% of Parking Requirement, may be provided through cash-in-lieu.
- ⁽²⁾ = A reduction in Parking Requirement may be approved, pursuant to Chapter 26.430, Special review and according to the review criteria of Section 26.515.080
- ⁽³⁾ = A reduction in Parking Requirements may be approved, pursuant to Chapter 26.520, Accessory dwelling units and carriage houses.
- ⁽⁴⁾ = All Single Family and Duplex dwelling units, as well as ADUs and Carriage Houses shall provide their Parking Requirement as off-street, on-site parking spaces.
- SF = Square feet
- NLA = Net leasable square feet of commercial space

B. Fractional Requirement Computed. When any calculation of Parking Requirements results in a fractional unit, that fractional unit may be paid through a cash-in-lieu payment or satisfied through one whole additional on-site parking or mobility commitment credit.

C. Removal of Existing Parking Spaces. When a redevelopment, change of use, or reconfiguration of existing parking does not meet the applicability requirements for this section but proposes the removal of one or more parking spaces or mobility measures present on the site, the project must mitigate for the reduction, pursuant to this chapter.

26.515.050. Meeting Parking Requirements.

A. General requirements. Parking Requirements shall be satisfied through the following provisions alone or in combination and described in a project's Mobility Plan:

1. **Cash-in-lieu.** Cash-in-lieu payments may be made to satisfy Parking Requirements as outlined by zone district in Table 26.515-2, and according to Section 26.515.090.
2. **Provision of Off-Street Parking:**
 - a. **On-Site Parking.** Off-street parking may be provided on-site in applicable zone districts to satisfy Parking Requirements, with Reserved and Accessory spaces not to exceed the Parking Maximums outlined below in Table 26.515-1. Shared parking may be counted provided that a Shared Parking Agreement and a shared-parking analysis, as approved by the Community Development Director, is executed.
 - b. **Off-Site Parking.** Off-street parking may be provided off-site in applicable zone districts to satisfy Parking Requirements, provided that a Shared Parking Agreement and a shared-parking analysis, as approved by the Community Development Director, is executed. Off-site parking is subject to Special Review per Chapter 26.430 and Section 26.515.080.
 - c. **Reserved and Accessory Spaces.** For both On-Site Parking and Off-Site Parking, Reserved and Accessory spaces in excess of the Parking Provision Maximums outlined below in Table 26.515-1 are subject to the Shared Parking standards in Section 26.515.040.A.3.
3. **Shared Parking Spaces.** For both On-Site Parking and Off-Site parking, shared parking spaces may be provided contingent upon a shared parking analysis being completed and a Shared Parking Agreement being executed, as approved by the Community Development Director.
4. **Mobility Measures.** Mobility Measures, as defined in Section 26.515.010.B, may be provided, as follows:
 - a. Where projects are TIA exempt, Mobility Measures may be provided to satisfy Parking Requirements as outlined by zone district in Table 26.515-2.

- b. Where projects are subject to the TIA, Surplus Mobility Measures (after the minimum TIA mitigation requirements have been met) may be provided to satisfy Parking Requirements as outlined by zone district in Table 26.515-2.

The extent to which a project may satisfy its Parking Requirements with Mobility Commitments, On-Site Parking provision, and Cash-in-Lieu will vary by location, according to Table 26.515-2 below.

Table 26.515-2 - Parking Requirements by Zone District				
Location	Options for Meeting Parking Requirements			
	<i>Additional TIA Credits (Projects Subject to TIA)</i>	<i>Mobility Commitments (Projects Exempt from TIA)</i>	<i>On-Site Parking Provision</i>	<i>Cash-In-Lieu of Parking Fee Payment</i>
Commercial Core (CC) and Commercial-1 (C-1) zones	Up to 2 Additional TIA Credits	Up to 2 Mobility Commitments	* Up to 20% of the Requirement. Up to 100% of the requirement if subgrade.	Up to 100% of the Requirement
Remaining Commercial, Lodging, and Lodging Overlay Zones	1 Additional TIA Credit (equal to 1 Parking Unit)	1 Mobility Commitment (equal to 1 Parking Unit)	At least 60% and up to 100% of the Requirement	Up to 40% of the Requirement
Remaining Infill Area	1 Additional TIA Credit (equal to 1 Parking Unit)	1 Mobility Commitment (equal to 1 Parking Unit)	Up to 100% of the Requirement	Up to 100% of the Requirement
All other Areas	1 Additional TIA Credit (equal to 1 Parking Unit)	1 Mobility Commitment (equal to 1 Parking Unit)	At least 60% and up to 100% of the Requirement	Up to 40% of the Requirement

Parking Requirements are subject to the following standards:

1. If the Parking Requirement is subject to establishment by adoption of a Planned Development final development plan, review is subject to Chapter 26.445, Planned Development.
2. If the Parking Requirement is established through a special review, the standards and procedures of Section 26.515.080, Special Review Standards apply.
3. If the Parking Requirement is met via cash-in-lieu, the standards and procedures set forth at Section 26.515.090, Cash-in-Lieu of Parking apply.

4. For properties listed on the Aspen Inventory of Historic Landmark Sites and Structures, a waiver of the Parking Requirement may be approved, pursuant to Chapter 26.430, Special Review, and according to the review criteria set forth below.
5. For lodging projects with flexible unit configurations, also known as “lock-off units,” each separate “key,” or rentable division, shall constitute a unit for the purposes of this section.
6. The Parking Requirement for projects with multiple, distinct land uses (residential, commercial, lodging, or other) may be lowered, if the applicant submits a shared-parking analysis, approved by the Community Development Director, which results in a peak-parking-demand measure that is less than the Parking Requirement established by Table 26.515-1. The application for a shared parking analysis shall be reviewed by The Transportation, Parking, Engineering, and Community Development Departments and approved by the Planning and Zoning Commission as a Special Review (Section 26.430).
- *7. Off-street parking provision on a parcel that abuts an Aspen Pedestrian Mall may only be provided in an on-site, subgrade parking structure. Alternatively, parcels abutting an Aspen Pedestrian Mall may provide all Parking Requirements through the payment of Cash-in-Lieu (Section 26.515.090).

26.515.060. Procedures for Review.

Development and redevelopment applications shall be reviewed pursuant to the following procedures, as well as standards and the Common Development Review Procedures set forth in Chapter 26.304.

A. Review Authority. All applications will be reviewed administratively for compliance with this Chapter and relevant guidelines in conjunction with a project’s land use application, unless otherwise specified. In all circumstances, the final land use review body shall approve the TIA, after considering a recommendation from the Engineering, Transportation, and Community Development Departments.

B. Review Process. For all applicable development, Mobility Plan review is completed in conjunction with required land use reviews. Pursuant to Section 26.304.020, Pre-application Conference, applicants are encouraged, although not required, to meet with a member of the Community Development Department to clarify requirements of this Section and to determine applicability.

1. For development only subject to administrative-level land use reviews, or for development meeting a threshold established in the TIA Guidelines but not subject to a land use review, the City Engineering and Transportation Departments may, on behalf of the City of Aspen,

determine that the project meets or exceeds the requirements set forth in this Chapter and the Transportation Impact Analysis Guidelines.

2. When development proposes to remove existing on-site parking or mobility measures, replacement mitigation pursuant to Section 26.515.050 shall be required as part of a land use review, administrative review, or building permit application, as applicable.
3. In all circumstances, the final land use review body shall approve the TIA, after considering a recommendation from the Engineering and Transportation Departments.

C. Review Criteria. All applicable projects are required to submit a Mobility Plan, which shall include and describe a project's mitigations for TIA and Parking Requirements. The Engineering, Transportation, and Community Development Department staff shall determine whether the project conforms to this Chapter requirements using the following standards:

1. Project TIA and the resulting mitigation program meets requirements for exempt, minor, or major project categories as outlined in the TIA Guidelines.
2. Project provides full mitigation for the Parking Requirements pursuant to Section 26.515.050.
3. If existing development is expanded, additional Parking Requirements shall be provided for that increment of the expansion.
4. If existing development is redeveloped, on-site parking deficits may not be maintained unless all parking, or at least 20 spaces are provided as Public Parking.

Projects failing to meet the requirements of this section may apply for a variation to the Planning and Zoning Commission through the Special Review process (Section 26.430 and Section 26.515.080).

26.515.070. Off-Street Parking Requirements.

A. Applicability. Where off-street parking spaces are provided as part of a Mobility Plan, the regulations in Sections 26.515.070.(B – I) apply.

B. General. Each off-street parking space shall consist of an open area measuring eight and one half (8½) feet wide by eighteen (18) feet long and seven (7) feet high with a maximum longitudinal slope of twelve percent (12%) and a maximum cross slope of five percent (5%). For developments providing more than 15 on-site parking spaces, 25% of the on-site spaces may be provided as Compact Parking in accordance with the requirements of the Engineering Design Standards. Each parking space, except those provided for detached residential dwellings and duplex dwellings, shall have an unobstructed access to a street or alley. Off-street parking provided for multi-family dwellings which do not share a common parking area may be exempted from the unobstructed access requirement subject to special review pursuant to Chapter 26.430, Special review and the standards set forth at Section 26.515.040, Special review standards, below.

Off-street parking must be paved with all-weather surfacing or be covered with gravel. For residential development, a grass ring or grass-paver-type surface may be used. All parking shall be maintained in a usable condition at all times. All development or redevelopment must be in conformance with, or bring existing parking into conformance with, Engineering Design Standards, including but not limited to the access requirements outlined in Chapter 4 Transportation Design.

C. Use of off-street parking. Parking spaces shall be used for the parking of vehicles and shall not be used for non-auto related uses such as storage units or trash containers. No off-street parking area shall be used for the sale, repair, dismantling or servicing of any vehicles, equipment, materials or supplies, nor shall any such activity adjacent to off-street parking spaces obstruct required access to off-street parking areas.

D. Location of off-street parking. Off-street parking, except shared parking, publicly accessible parking, or off-site parking as approved as part of a mobility plan, shall be located on the same parcel as the principal use or an adjacent parcel under the same ownership as the lot occupied by the principal use. For all uses, parking shall be accessed from an alley or secondary road where one exists unless otherwise established according to this Chapter.

E. Detached and duplex residential dwelling parking. Off-street parking provided for detached residential dwellings and duplex dwellings is not required to have unobstructed access to a street or alley, but shall not block access of emergency apparatus to the property or to structures located on the property. This allows for "stacking" of vehicles where a vehicle is parked directly behind another.

F. State Highway 82 off-street parking. All parking required for uses fronting State Highway 82 shall be accessed from the alley, if an alley exists, and shall not enter from or exit onto State Highway 82.

G. Surface parking. Surface parking is prohibited or requires conditional use review as a principal use of a lot or parcel in some Zone Districts (See Chapter 26-710). Where surface parking is permitted and eight (8) or more spaces are provided, the parking area shall include one (1) tree with a planter area of twenty (20) square feet for each four (4) parking spaces. Planter areas may be combined but shall be proximate to the parking spaces. The Planning and Zoning Commission may waive or modify this requirement on a per case basis. Parking within structures is exempt from this landscaping provision.

H. Restrictions on drainage, grading and traffic impact. Off-street parking spaces shall be graded to ensure drainage does not create any flooding or water quality impacts and shall be provided with entrances and exits so as to minimize traffic congestion and traffic hazards.

I. Restrictions on lighting. Lighting facilities for off-street parking spaces, if provided, shall be arranged and shielded so that lights neither unreasonably disturb occupants of adjacent residential dwellings nor interfere with driver vision. All outdoor lighting shall comply with the outdoor lighting regulations, Section 26.575.150.

26.515.080. Special Review Standards.

Whenever the transportation, mobility, and parking impacts of a proposed development are subject to special review, an application shall be processed as a special review in accordance with the common development review procedures set forth in Chapter 26.304 and be evaluated according to the following standards. Review is by the Planning and Zoning Commission.

If the project requires review by the Historic Preservation Commission and the Community Development Director has authorized consolidation pursuant to Subsection 26.304.060.B, the Historic Preservation Commission shall approve, approve with conditions or disapprove the special review application.

A special review for establishing, varying or waiving transportation, mobility, or off-street parking requirements may be approved, approved with conditions or denied based on its conformance with all of the following criteria:

1. The transportation, mobility, and off-street parking needs of the residents, customers, guests and employees of the project have been met, taking into account potential uses of the parcel, the projected traffic generation of the project, any shared parking opportunities, expected schedule of parking demands, the projected impacts on the on-street parking of the neighborhood, the proximity to mass transit routes and the downtown area and any special services, such as vans, provided for residents, guests and employees.
2. An on-site mitigation solution meeting the requirements and guidelines is practically difficult or results in an undesirable development scenario.
3. Existing or planned on-site or off-site facilities adequately serve the needs of the development, including the availability of street parking.

A. Commercial Parking Facilities. Special Review is required for a commercial parking facility. A special review to permit a commercial parking facility may be approved, approved with conditions or denied based on conformance with its adherence to Commercial Design Standards and the policy goal of provision of publicly-accessible parking in areas with high public parking demand (in order to reduce vehicle congestion and emissions due to vehicles circling for parking) is not offset by the proposed commercial parking facility's potential adverse impacts of the City's multi-modal transportation system. For properties in zone districts where Conditional Use Review is required for a Commercial Parking Facility, Conditional Use and Special Review shall be combined.

26.515.090. Cash-in-lieu Requirements.

A. General. The City conducted a parking facility analysis in the fall of 2016 and determined the costs associated with developing new parking facilities to serve the demands of development. While not all potential facilities represented the same potential expenditure,

facilities considered likely to be developed by the City required an expected thirty-eight thousand dollars (\$38,000) per space to develop in 2016 dollars.

B. Cash-in-lieu. Mobility improvements serving commercial and mixed-use development are a public amenity and serves the mobility needs of the general population. As such, the mobility needs of the general population can be improved through various means other than the provision of on-site parking spaces, including cash-in-lieu. A cash-in-lieu payment, for those types of development authorized to provide parking via cash-in-lieu, may be accepted by the Community Development Director to satisfy the Parking Requirement, as described in Section 26.515.040, above.

1. Time of payment. The payment-in-lieu of parking shall be due and payable at the time of issuance of a building permit. All funds shall be collected by the Community Development Director and transferred to the Finance Director for deposit in a separate interest-bearing account.
2. Use of funds. Monies in the account shall be used solely for the construction of a public parking facility, transportation and mobility improvements, including vehicles or station improvements, transportation demand management facilities or programs, shared automobiles or programs and similar transportation or mobility-related facilities or programs as determined appropriate by the City.
3. Refunds. Fees collected pursuant to this Section may be returned to the then-present owner of the property for which a fee was paid, including any interest earned, if the fees have not been spent within seven (7) years from the date fees were paid, unless the Council shall have earmarked the funds for expenditure on a specific project, in which case the time period shall be extended by up to three (3) more years. To obtain a refund, the present owner must submit a petition to the Finance Director within one (1) year following the end of the seventh (7th) year from the date payment was received by the City.

For the purpose of this Section, payments collected shall be deemed spent on the basis of “the first payment in shall be the first payment out.” Any payment made for a project for which a building permit is revoked or cancelled, prior to construction, may be refunded if a petition for refund is submitted to the Finance Director within three (3) months of the date of the revocation or cancellation of the building permit. All petitions shall be accompanied by a notarized, sworn statement that the petitioner is the current owner of the property and that the development shall not commence without full compliance with this Chapter and by a copy of the dated receipt issued for payment of the fee.

4. Periodic review of rate. To ensure that the payment-in-lieu rate is fair and represents current cost levels, it shall be reviewed every two years. Any necessary amendments to this Section shall be initiated pursuant to Section 26.310.020, Procedure for amendment.

26.515.100. Amendments. Amendments to an approved Mobility and Parking Requirement review by the Community Development Director in coordination with the Engineering and Transportation Departments as needed.

A. Amendments to Trip Reduction Measures. Off-site MMLOS infrastructure measures that have been implemented may not be amended at any time. Off-site MMLOS infrastructure measures that have not been implemented, and any on-site TDM and MMLOS measures, may be amended as outlined below. Changes shall be reviewed by the Engineering, Transportation, and Community Development Departments to ensure the proposed change is appropriate given the site's context.

1. Insubstantial Amendment. Any amendment to TDM or MMLOS measures resulting in the same or more number of trips mitigated as the original approval may be approved administratively by the Community Development Department, after considering a recommendation from the Engineering and Transportation Departments. A land use application is required, pursuant to Chapter 26.304, *Common Development Review Procedures*. The applicant shall demonstrate how the new measure(s) is appropriate given current site conditions.
2. Substantial Amendment. Any amendment to TDM or MMLOS measures that reduces the number of trips mitigated shall be reviewed by City Council, after considering a recommendation from the Community Development, Engineering, and Transportation Departments. A land use application is required, pursuant to Chapter 26.304, *Common Development Review Procedures*, and the review shall be conducted in a duly noticed public hearing, pursuant to Section 26.304.060(E), *Public Notice*. City Council shall find the following standards are met:
 - a) The proposed change responds to changed site conditions or circumstances, including but not limited to changes to land uses, site topography, or site plan.
 - b) The proposed changes will not adversely impact the immediate vicinity.
 - c) The proposed change meets the original intent of the approved measures.
 - d) The proposed changes have been approved by the Community Development Director.

26.515.110 Appeals. An applicant may challenge a determination made by the City in their enforcement of the requirements of this Chapter by filing with the Community Development Director a written notice of appeal as provided in Section 26.316.030, Appeals procedures, with a full statement of the grounds for appeal. Appeals shall be reviewed by City Council, pursuant to Chapter 26.316, Appeals.

(Ord. No. 17-2005, §1; Ord. No. 32, 2016, §1; Ord. No. 23, 2017, §23)

Section 2: Any scrivener's errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 3: Effect Upon Existing Litigation.

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 4: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 5: Effective Date.

In accordance with Section 4.9 of the City of Aspen Home Rule Charter, this ordinance shall become effective thirty (30) days following final passage.

Section 6: Public Notice

A public hearing on this ordinance shall be held on the 20th day of May, 2019, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED, READ, AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 20th day of May, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

FINALLY, adopted, passed and approved this 20th day of May, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

Approved as to form:

James R. True, City Attorney



26.310.050 Amendments to the Land Use Code Standards of review - Adoption.

In reviewing an application to amend the text of this Title, per Section 26.310.020(B)(3), Step Three – Public Hearing before City Council, the City Council shall consider:

A. Whether the proposed amendment is in conflict with any applicable portions of this Title.

Staff Findings:

There are no known conflicts with any other portions of Title 26. The purpose of these amendments is to improve clarity in the administration of the Parking and Transportation Mitigation requirements. Staff finds this criterion to be met.

B. Whether the proposed amendment achieves the policy, community goal, or objective cited as reasons for the code amendment or achieves other public policy objectives.

Staff Findings:

The proposed Land Use Code amendment to clarify the administration of the Parking chapter of code meets a number of goals of the AACP, as well as the stated goals of the Policy Resolution authorizing the amendment. The proposed amendment is in line with the goals and objectives of the City. Specific AACP statements this work furthers, includes:

- Managing Growth – I.1 Achieve sustainability growth practices to ensure the long-term viability and stability of our community and diverse visitor-based economy.
- Managing Growth – VIII.2 Create certainty in zoning and the land use process.
- Transportation – Parking V.1 Develop a strategic parking plan that manages the supply of parking and reduces the adverse impacts of the automobile.

Staff finds this criterion to be met.

C. Whether the proposed amendment is compatible with the community character of the City and is in harmony with the public interest and the purpose and intent of this Title.

Staff Findings:

The proposed policies and code amendments ensure the ongoing effectiveness and viability of the City's Land Use Code by ensuring its accuracy and the effectiveness of the regulations contained therein. Staff finds this criterion to be met.

Chapter 26.515
TRANSPORTATION AND PARKING MANAGEMENT

Sections:

26.515.010	Purpose <u>and Definitions</u>
26.515.020	Applicability
26.515.030	Transportation Mitigation
26.515.040	Parking Requirements
26.515.050	Meeting Parking Requirements
26.515.060	Procedures for Review
26.515.070	Off-Street Parking Requirements
26.515.080	Special Review Standards
26.515.090	Cash-in-lieu for Parking Requirements
26.525.100	Amendments
26.515.110	Appeals

26.515.010. Purpose

This Chapter establishes unified transportation and mobility standards to promote the city’s policies relating to mobility, access to employment opportunities, and sustainability. This chapter implements policies from the Aspen Area Community Plan to:

- Limit vehicle trips into Aspen to 1993 levels, and reduce peak-hour vehicle-trips to at or below 1993 levels;
- Use Transportation Demand Management tools to accommodate additional person trips in the Aspen Area;
- Maintain the reliability and improve the convenience of City of Aspen transit services;
- Expand and improve bicycle parking and storage within the Urban Growth Boundary;
- Improve the convenience, safety, and quality of experience for bicyclists and pedestrians on streets and trails;
- Require development to mitigate its transportation impacts; and
- Develop a strategic parking plan that manages the supply of parking and reduces the adverse impacts of the automobile.

This Chapter establishes a variety of ways for property owners and developers to mitigate their impacts on the transportation network. As new development and growth occur, increased burdens on the transportation system can make it more difficult for the City to meet its transportation and air quality goals. To the extent that increased travel demand can shift away from automobile dependence, development and growth can be compatible with, and even support, these goals.

To promote this shift in travel behavior, the City has transformed its approach to parking requirements to focus on the promotion and expansion of mobility options, including more walkable development patterns and a more efficient parking system, as well as the provision of public and development-based mobility resources. This will directly improve the travel experience and quality of life within growth areas, while helping to maintain the City's transportation-system and air-quality standards.

This is accomplished through a new integrated approach, which incorporates the City's Transportation Impact Analysis (TIA) Guidelines with Off-Street Parking Requirements. Where the TIA serves to evaluate the potential adverse effects of proposed projects on Aspen's transportation systems, the off-street parking regulations focus on on-site mitigation needs resulting from the provision of parking.

Applicants will use a simplified, two-tiered process that:

1. Determines the project's TIA applicability and calculates the project's resulting "parking requirement," and
2. Provides a Mobility Plan that includes the applicant's parking and mobility mitigation requirements, which includes the provision of parking, utilization of cash-in-lieu, and/or provision mobility options, including TIA mitigations if applicable.

The City then reviews the project's mitigations for parking and mobility together as part of the project's land use application.

A. Adoption of Transportation Impact Analysis (TIA) Guidelines

Pursuant to the powers and authority conferred by the Charter of the City, there is hereby adopted and incorporated herein by reference as fully set forth those standards contained in the City of Aspen's Transportation Impact Analysis Guidelines, as may be amended, updated and expanded from time to time by City Council Resolution (referred to in this Code as the "TIA Guidelines"). At least one (1) copy of the TIA Guidelines shall be available for public inspection at the Community Development, Engineering, and Transportation Departments.

B. -Definitions. As used in this Section, ~~unless the context otherwise requires~~, the following terms shall be defined as follows:

Mobility ~~Commitments~~ Measures. Pre-approved ~~alternative~~ mobility measures included in the Mobility Plan as part of a development application. These include the ~~TDM and/or MMLOS Mitigation Tools (located on the City's website), and include:~~

Transportation Demand Management (TDM) and/or Multimodal Level of Service (MMLOS) Mitigation Tools prescribed by the TIA, defined as follows:

- Transportation Demand Management (TDM) Tools, which ~~is the application of~~ are strategies and policies to reduce travel demand, particularly by single-occupancy vehicles; and

- Multi-Modal Level of Service (MMLOS) ~~Tools~~, which ~~evaluates~~ are improvements to transportation services of roadways from service quality for travelers using a variety of modes including pedestrian, bicycle pedestrians, bicyclists, and transit facilities passengers.

Mobility Plan. A complete ~~development~~ mitigation plan ~~that includes both TIA for a proposed development's transportation and parking requirements~~ system impacts.

Parking Maximum. The maximum number of parking spaces ~~allowed~~ provided on-site for a designated use. ~~before triggering compliance with shared parking requirements.~~

Parking Minimum. The minimum number of parking spaces ~~that must be provided~~ required on-site for a designated use.

Parking Requirement. The sum of a project's required Parking Units, as provided in Section 26.515.020.C.2.

~~**Parking Space, Reserved.** A parking space that is managed to limit access to specified individuals or specific on-site land uses.~~

~~**Parking Space, Accessory.** A parking space that is managed to limit access to individuals engaged with on-site uses (residents, tenants, and their guests/customers), but are shared between all on-site land uses across different peaks in service throughout a 24-hour period.~~

~~**Parking Space, Guest/Loading.** A parking space that is managed to provide 24-hour access to a development for guests, deliveries and loading to the public, service providers, and other non-resident visitors to a development on a non-permanent basis.~~

~~**Parking Space, Public.** A parking space that is managed to provide at least 12 hours of public use in any 24-hour period, with approved signage to effectively identify these hours of public access.~~

~~**Parking Space, Priced.** A parking space – whether reserved, accessory, or public – that is priced comparable to market rates at all times of operation.~~

~~**Parking Space, Municipal.** A parking space that is provided within City of Aspen facilities, or directly managed by the City of Aspen, whether located in a private or City-owned parking facility.~~

~~**Parking Space, Reserved.** A parking space that is managed to limit access to specified individuals or specific on-site land uses.~~

~~**Parking Unit.** A measure of a project's parking impact, valued at \$38,000 per parking space, which must be mitigated and/or accommodated via mobility commitments, parking provision, and/or cash in lieu.~~

Shared Parking, Shared. Parking that is shared between multiple, distinct land uses, on the same site or between proximate sites, to make more efficient use of spaces and reduce overall supply needs. Shared parking is required on a development which exceeds its on-site parking provision maximum standard. Shared parking can be used to ~~seek provisional approval to either~~ reduce a project's Parking Requirement, ~~or to facilitate the use of.~~ Shared parking may include off-site parking ~~to meet the Parking Requirement.~~ Shared parking may include spaces and/or priced parking spaces.

Surplus Mobility Measures. Any additional mitigation credits remaining after TIA-subject projects have met the TIA requirements. TIA subject-projects may apply Surplus mobility measures towards mitigation of Transportation Unit Requirements.

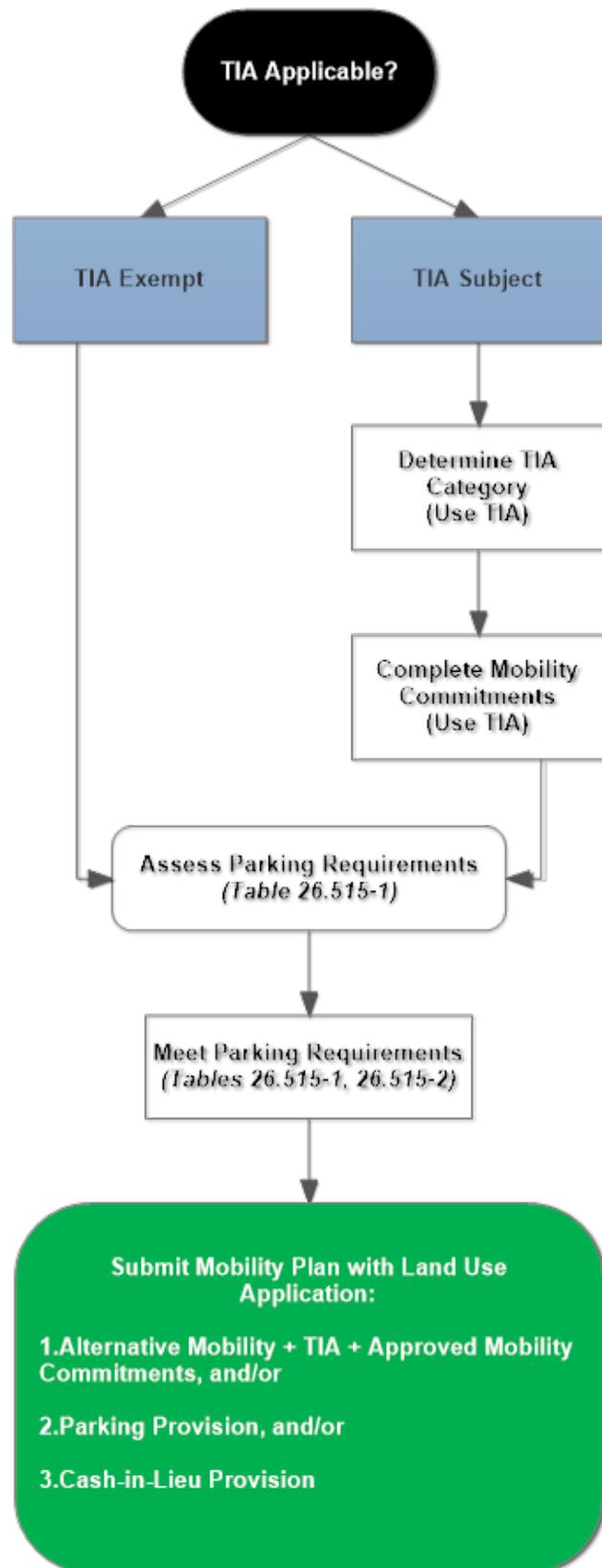
Transportation Impact Analysis (TIA). Technical analysis guidelines for potential transportation impacts generated by development projects within the City of Aspen.

26.515.020. Applicability. ~~This Section applies to all development and redevelopment, unless otherwise specifically exempted or limited.~~

This Section applies to all development and redevelopment which meets the definition of Demolition, or any redevelopment which proposes to reduce on-site parking and/or mobility measures unless otherwise specifically exempted or limited.

A. Determination of Applicability.

The applicant may request a preliminary pre-application conference with staff from the Community Development Department to determine the applicability of the requirements of this ~~chapter~~Chapter for the proposed development. The following chart details the ~~applicability of~~ process for complying with the requirements ~~for varying of this Section through the creation of a~~ mobility plan. The TIA Guidelines are available on the City of Aspen website and may be used to determine whether a project ~~types~~ is subject to or exempt from the TIA.



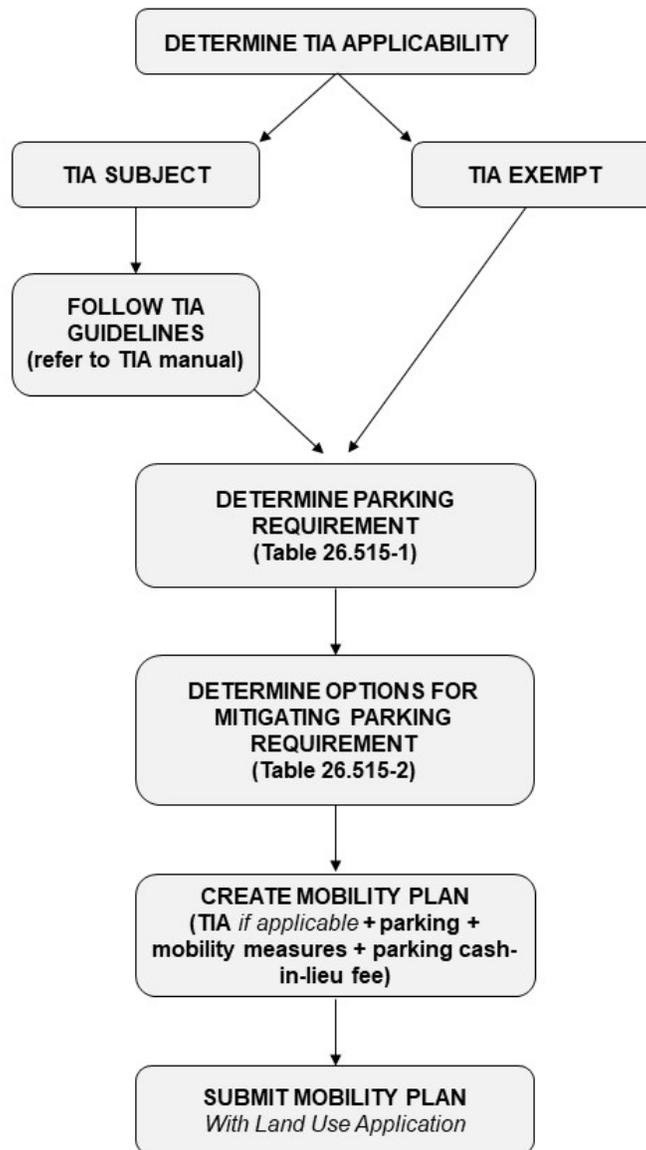


Figure 1: Applicability chart illustrating how to create a Mobility Plan.

C. **Requirements.** This Chapter requires all applicable development ~~and redevelopment~~ to submit a Mobility Plan, which ~~includes~~ addresses the following:

- TIA applicability, and TIA compliance (as applicable),
- 1. ~~Transportation Mitigation.~~ Mitigation for impacts on the City's multi-modal transportation networks through the Transportation Impact Analysis (TIA) process; and
- Parking Requirement. Mitigation for impacts on the City's public and private parking system and the reduction

- The provision of parking demand through mobility improvements, cash, and
- ~~2. • Cash-in-lieu of parking, (as applicable), and/or parking provision.~~
- Surplus mobility measures (as applicable).

The City then reviews the project’s proposed TIA and Mobility Plan together as part of the project’s Land Use Application.

26.515.030 Transportation Mitigation.

A. General Requirements. All applicable development shall ~~accommodate~~mitigate its projected transportation impacts as provided in this Chapter. Refer to the Transportation Impact Analysis (TIA) for project applicability. Mobility requirements shall be satisfied through use of the following approaches, either alone or in combination

- ~~1. B. ——— Approved Trip Reduction~~Mobility Measures. ~~Trip reduction measures, also known as~~Applicable development must provide Transportation Demand Management (TDM) and Multi-Modal Level of Service (MMLOS) measures, ~~which are approved and implemented as provided for a development pursuant to in~~ the Transportation Impact Analysis (TIA) Guidelines. These measures shall be maintained for the life of the development. ~~These credits will be used to satisfy TIA requirements.~~ All requirements shall be incorporated in the project’s Development Agreement, pursuant to Chapter 26.490, *Development Documents*.

~~C. ——— TIA Credits.~~

Surplus Mobility Measures. Upon ~~completion~~satisfaction of ~~the TIA analysis, the program will be reviewed for~~ TIA requirements, a development’s Mobility Plan may include surplus mobility measures, where ~~credits~~credit is provided over the minimum TIA requirements ~~may be and~~ applied towards Parking Requirements:

2. outlined in Table 26.515-1. The proportion of surplus mobility measures permitted for a development is outlined in Table 26.515-2.

26.515.040 Parking Requirements.

A. General requirements. All applicable development shall accommodate its projected parking impacts as provided in this Chapter. Parking Requirements shall be satisfied through use of the following either alone or in combination.

~~B. ———~~

- ~~1. Parking Requirement~~ Minimums and Maximums. ~~Calculation.~~ Parking Requirements shall be calculated for each use within a development according to Table 26.515-1.

- ~~2. Parking~~ Minimums. ~~Development and redevelopment~~ Provision Minimum. Applicable development shall satisfy the minimum Parking Provision Requirement, as calculated in Table 26.515-1. Minimum parking provisions may be reduced in combination with mobility measures and transportation system impact fees in accordance with the standards in Table 26.515-2.

2.3. Parking Provision Maximum. ~~In order to~~To create appropriate site planning and provision of parking, applicable development ~~and redevelopment~~ shall not provide on-site parking in excess of 125% of the Parking ~~Minimum~~Provision Maximum requirement in the form of Reserved Parking Spaces or Accessory Parking Spaces, unless the total number of on-site spaces in excess of 125% of the Parking ~~Requirement~~Provision Maximum are provided as Public Parking Spaces.

~~C. — Parking Requirement Calculation. — Parking Requirements shall be met for each use according to Table 26.515-1, where requirements are calculated as Parking Units (defined in Section 26.515.010.B):~~

Table 26.515-1 Parking Impact Requirement Calculations			
Use	Aspen Infill Area		All Other Areas Parking Requirement (in units)
	<i>Parking Requirement (in units)</i>	<i>Parking Maximum (in units)</i>	
Commercial⁽¹⁾	1 unit /1,000 sf Net Leasable Space	1.25 units / 1,000 sf NLA	3 units per 1,000 sf NLA ⁽²⁾
Residential – Single-Family and Duplex⁽⁴⁾	Lesser of 1 unit per bedroom or 2 units per Dwelling Unit	Greater of 1.25 units per bedroom or 2.5 units per dwelling unit	Lesser of 1 unit per bedroom or 2 per unit
Residential – Accessory Dwelling Units and Carriage Houses^{(3) (4)}	1 unit per unit	1.25 units per unit	1 unit per unit ⁽³⁾
Residential – Multi-Family (as a single use)	1 unit per Dwelling Unit	1.25 units per dwelling unit	Lesser of 1 unit per bedroom or two units per Dwelling Unit
Residential – Multi-Family within a mixed-use building	1 unit per Dwelling Unit	1.25 units per dwelling unit	1 per Dwelling Unit ⁽²⁾
Hotel/Lodge	0.5 units per Key	0.7 units per Key	0.7 units per Key ⁽²⁾
All Other Uses (civic, cultural, public uses, essential public facilities, child care centers, etc.)	Established by Special Review according to the review criteria of Section 26.515.080.	N/A	Established by Special Review according to the review criteria of Section 26.515.080.

Key to Table 26.515-1:

- ⁽¹⁾ = Up to 100% of ~~required~~ Parking Requirement, may be provided through cash-in-lieu.
- ⁽²⁾ = A reduction in Parking Requirement may be approved, pursuant to Chapter 26.430, Special review and according to the review criteria of Section 26.515.080
- ⁽³⁾ = A reduction in Parking Requirements may be approved, pursuant to Chapter 26.520, Accessory dwelling units and carriage houses.
- ⁽⁴⁾ = All Single Family and Duplex dwelling units, as well as ADUs and Carriage Houses shall provide their Parking Requirement as off-street, on-site parking spaces.
- SF = Square feet
- NLA = Net leasable square feet of commercial space

D. — Parking Requirement when B. — Fractional Requirement Computed. When any calculation of Parking Requirements results in a fractional unit, that fractional unit may be paid through a cash-in-lieu payment, or satisfied through one whole additional on-site parking or mobility commitment credit.

C. — Removal of Existing Parking Spaces. When a redevelopment, change of use, or reconfiguration of existing parking does not meet the applicability requirements for this section but proposes the removal of one or more parking spaces or mobility measures present on the site, the project must mitigate for the reduction, pursuant to this chapter.

26.515.050. Meeting Parking Requirements.

A. — General requirements. Parking Requirements shall be satisfied through the following provisions, alone or in combination thereof and described in a project's Mobility Plan:

1. Cash-in-lieu. Cash-in-lieu payments may be made to satisfy Parking Requirements as outlined by zone district in Table 26.515-2, and according to Section 26.515.090.

2. Provision of Off-Street Parking:

2.a. On-Site Parking. May Off-street parking may be provided on-site in applicable zone districts to satisfy Parking Requirements, with Reserved and Accessory spaces not to exceed the Parking Maximums outlined below in Table 26.515-1. Shared parking may be counted provided that a Shared Parking Agreement and a shared-parking analysis, as approved by the Community Development Director, is executed.

3.b. — Off-Site Parking. Off-site parking may be counted toward the requirement provided off-site in applicable zone districts to satisfy Parking Requirements, provided that a Shared Parking Agreement and a shared-parking analysis, as approved by the Community Development Director, is executed. Off-site parking is subject to Special Review per Chapter 26.430 and Section 26.515.080.

c. Reserved and Accessory Spaces. For both On-Site Parking and Off-Site Parking, Reserved and Accessory spaces in excess of the Parking Provision Maximums outlined below in Table 26.515-1 are subject to the Shared Parking standards in Section 26.515.040.A.3.

3. Shared Parking Spaces. For both On-Site Parking and Off-Site parking, shared parking spaces may be provided contingent upon a shared parking analysis being completed and a Shared Parking Agreement being executed, as approved by the Community Development Director.

4. Mobility ~~Commitments~~ Measures. Mobility ~~Commitments~~ Measures, as defined in Section 26.515.010.B, may be provided, as follows:

- a. Where projects are TIA exempt, ~~pre-approved alternative mobility measures~~ Mobility Measures may be provided to satisfy Parking Units Requirements as outlined by zone district in Table 26.515-2.
- b. Where projects are subject to the TIA ~~subject, pre-approved alternative mobility measures generated over~~, Surplus Mobility Measures (after the minimum TIA mitigation requirements have been met) may be provided to satisfy Parking Units Requirements as outlined by zone district in Table 26.515-2.

The extent to which a project may satisfy its Parking Requirements with Mobility Commitments, On-Site Parking provision, and Cash-in-Lieu will vary by location, according to Table 26.515-2 below.

Table 26.515-2 - Parking Requirements by Zone District				
Location	Options for Meeting Parking Requirements			
	<i>Additional TIA Credits (Projects Subject to TIA)</i>	<i>Mobility Commitments (Projects Exempt from TIA)</i>	<i>On-Site Parking Provision</i>	<i>Cash-In-Lieu of Parking Fee Payment</i>
Commercial Core (CC) and Commercial-1 (C-1) zones	Up to 2 Additional TIA Credits	Up to 2 Mobility Commitments	* Up to 20% of the Requirement. Up to 100% of the requirement if subgrade.	Up to 100% of the Requirement
Remaining Commercial, <u>Lodging</u>, and <u>Lodging Overlay</u> Zones	1 Additional TIA Credit (equal to 1 Parking Unit)	1 Mobility Commitment (equal to 1 Parking Unit)	At least 60% and up to 100% of the Requirement	Up to 40% of the Requirement
Remaining Infill Area	1 Additional TIA Credit (equal to 1 Parking Unit)	1 Mobility Commitment (equal to 1 Parking Unit)	Up to 100% of the Requirement	Up to 100% of the Requirement
All other Areas	1 Additional TIA Credit (equal to 1 Parking Unit)	1 Mobility Commitment (equal to 1 Parking Unit)	At least 60% and up to 100% of the Requirement	Up to 40% of the Requirement

Parking Requirements are subject to the following standards ~~based upon the character of the development~~:

1. If the Parking Requirement is subject to establishment by adoption of a Planned Development final development plan, review is subject to Chapter 26.445, Planned Development.
2. If the Parking Requirement is established through a special review, the standards and procedures of Section 26.515.080, Special Review Standards apply.
3. If the Parking Requirement is met via cash-in-lieu, the standards and procedures set forth at Section 26.515.090, Cash-in-Lieu of Parking apply.

4. For properties listed on the Aspen Inventory of Historic Landmark Sites and Structures, a waiver of the Parking Requirement may be approved, pursuant to Chapter 26.430, Special Review, and according to the review criteria set forth below.
5. For lodging projects with flexible unit configurations, also known as “lock-off units,” each separate “key,” or rentable division, shall constitute a unit for the purposes of this section.
6. The Parking Requirement for projects with multiple, distinct land uses (residential, commercial, lodging, or other) may be lowered, if the applicant submits a shared-parking analysis, approved by the Community Development Director, which results in a peak-parking-demand measure that is less than the Parking Requirement established by Table 26.515-1. The application for a shared parking analysis shall be reviewed by The Transportation, Parking, Engineering, and Community Development Departments and approved by the Planning and Zoning Commission as a Special Review (Section 26.430).
- *7. Off-street parking provision on a parcel that abuts an Aspen Pedestrian Mall may only be provided in an on-site, subgrade parking structure. Alternatively, parcels abutting an Aspen Pedestrian Mall may provide all Parking Requirements through the payment of Cash-in-Lieu (Section 26.515.090).

26.515.060. Procedures for Review.

Development and redevelopment applications shall be reviewed pursuant to the following procedures, as well as standards and the Common Development Review Procedures set forth in Chapter 26.304.

A. Review Authority. All applications will be reviewed administratively for compliance with this Chapter and relevant guidelines in conjunction with a project’s land use application, unless otherwise specified. In all circumstances, the final land use review body shall approve the TIA, after considering a recommendation from the Engineering, Transportation, and Community Development Departments.

B. Review Process. For all applicable development, ~~expansions of existing development, and redevelopment,~~ Mobility Plan review is completed in conjunction with relevant required land use reviews. Pursuant to Section ~~26.304.020 of this title,~~ Pre-application Conference, applicants are encouraged, although not required, to meet with a member of the Community Development Department to clarify requirements of this Section and to determine applicability.

1. For development only subject to administrative-level land use reviews, or for development meeting a threshold established in the TIA Guidelines but not subject to a land use review, the City Engineering and Transportation Departments may, on behalf of the City of Aspen, determine that the project meets or exceeds the requirements set forth in this Chapter and the Transportation Impact Analysis Guidelines.

2. ~~When development meets an established threshold, but does not require~~ proposes to remove existing on-site parking or mobility measures, replacement mitigation pursuant to Section 26.515.050 shall be required as part of a land use review, administrative review for compliance with this Chapter and the Guidelines shall be completed as part of the, or building permit application, as applicable.

3. In all circumstances, the final land use review body shall approve the TIA, after considering a recommendation from the Engineering and Transportation Departments.

C. Review Criteria. All ~~development and redevelopment~~ applicable projects are required to submit a Mobility Plan, which shall include and describe a project's mitigations for TIA and Parking Requirements. The Engineering, Transportation, and Community Development Department staff shall determine whether the project conforms to this Chapter requirements using the following standards:

1. Project TIA and the resulting mitigation program meets requirements for exempt, minor, or major project categories as outlined in the TIA Guidelines.
2. Project provides full mitigation for the Parking Requirements pursuant to Section 26.515.050.
3. If existing development is expanded, additional Parking Requirements shall be provided for that increment of the expansion.
4. If existing development is redeveloped, on-site parking deficits may not be maintained unless all parking, or at least 20 spaces are provided as Public Parking.

Projects failing to meet the requirements of this section may apply for a variation to the Planning and Zoning Commission through the Special Review process (Section 26.430 and Section 26.515.080).

26.515.070. Off-Street Parking Requirements.

A. Applicability. Where off-street parking spaces are provided as part of a Mobility Plan, the regulations in Sections 26.515.070.(B – I) apply.

B. General. Each off-street parking space shall consist of an open area measuring eight and one half (8½) feet wide by eighteen (18) feet long and seven (7) feet high with a maximum longitudinal slope of twelve percent (12%) and a maximum cross slope of five percent (5%). For developments providing more than 15 on-site parking spaces, 25% of the on-site spaces may be provided as Compact Parking in accordance with the requirements of the Engineering Design Standards. Each parking space, except those provided for detached residential dwellings and duplex dwellings, shall have an unobstructed access to a street or alley. Off-street parking provided for multi-family dwellings which do not share a common parking area may be exempted from the unobstructed access requirement subject to special review pursuant to Chapter 26.430, Special review and the standards set forth at Section 26.515.040, Special review standards, below.

Off-street parking must be paved with all-weather surfacing or be covered with gravel. For residential development, a grass ring or grass-paver-type surface may be used. All parking shall be maintained in a usable condition at all times. All development or redevelopment must be in

conformance with, or bring existing parking into conformance with, Engineering Design Standards, including but not limited to the access requirements outlined in Chapter 4 Transportation Design.

C. Use of off-street parking. Parking spaces shall be used for the parking of vehicles and shall not be used for non-auto related uses such as storage units or trash containers. No off-street parking area shall be used for the sale, repair, dismantling or servicing of any vehicles, equipment, materials or supplies, nor shall any such activity adjacent to off-street parking spaces obstruct required access to off-street parking areas.

D. Location of off-street parking. ~~Off-street parking~~Off-street parking, except shared parking, publicly accessible parking, or off-site parking as approved as part of a mobility plan, shall be located on the same parcel as the principal use or an adjacent parcel under the same ownership as the lot occupied by the principal use. For all uses, parking shall be accessed from an alley or secondary road, where one exists unless otherwise established according to this Chapter.

E. Detached and duplex residential dwelling parking. Off-street parking provided for detached residential dwellings and duplex dwellings is not required to have unobstructed access to a street or alley, but shall not block access of emergency apparatus to the property or to structures located on the property. This allows for "stacking" of vehicles where a vehicle is parked directly behind another.

F. State Highway 82 off-street parking. All parking required for uses fronting State Highway 82 shall, ~~if an alley exists,~~ be accessed from the alley, if an alley exists, and shall not enter from or exit onto State Highway 82.

G. Surface parking. Surface parking is prohibited or requires conditional use review as a principal use of a lot or parcel in some Zone Districts (See Chapter 26-710). Where surface parking is permitted and eight (8) or more spaces are provided, the parking area shall include one (1) tree with a planter area of twenty (20) square feet for each four (4) parking spaces. Planter areas may be combined, but shall be proximate to the parking spaces. The Planning and Zoning Commission may waive or modify this requirement on a per case basis. Parking within structures is exempt from this landscaping provision.

H. Restrictions on drainage, grading and traffic impact. Off-street parking spaces shall be graded to ensure drainage does not create any flooding or water quality impacts and shall be provided with entrances and exits so as to minimize traffic congestion and traffic hazards.

I. Restrictions on lighting. Lighting facilities for off-street parking spaces, if provided, shall be arranged and shielded so that lights neither unreasonably disturb occupants of adjacent residential dwellings nor interfere with driver vision. All outdoor lighting shall comply with the outdoor lighting regulations, Section 26.575.150.

26.515.080. Special Review Standards.

Whenever the transportation, mobility, and parking impacts of a proposed development are subject to special review, an application shall be processed as a special review in accordance with the common development review procedures set forth in Chapter 26.304 and be evaluated according to the following standards. Review is by the Planning and Zoning Commission.

If the project requires review by the Historic Preservation Commission and the Community Development Director has authorized consolidation pursuant to Subsection 26.304.060.B, the Historic Preservation Commission shall approve, approve with conditions or disapprove the special review application.

A special review for establishing, varying or waiving transportation, mobility, or off-street parking requirements may be approved, approved with conditions or denied based on its conformance with all of the following criteria:

1. The transportation, mobility, and off-street parking needs of the residents, customers, guests and employees of the project have been met, taking into account potential uses of the parcel, the projected traffic generation of the project, any shared parking opportunities, expected schedule of parking demands, the projected impacts on the on-street parking of the neighborhood, the proximity to mass transit routes and the downtown area and any special services, such as vans, provided for residents, guests and employees.
2. An on-site mitigation solution meeting the requirements and guidelines is practically difficult or results in an undesirable development scenario.
3. Existing or planned on-site or off-site facilities adequately serve the needs of the development, including the availability of street parking.

A. Commercial Parking Facilities. Special Review is required for a commercial parking facility. A special review to permit a commercial parking facility may be approved, approved with conditions or denied based on conformance with its adherence to Commercial Design Standards and the policy goal of provision of publicly-accessible parking in areas with high public parking demand (in order to reduce vehicle congestion and emissions due to vehicles circling for parking) is not offset by the proposed commercial parking facility’s potential adverse impacts of the City’s multi-modal transportation system. For properties in zone districts where Conditional Use Review is required for a Commercial Parking Facility, Conditional Use and Special Review shall be combined.

26.515.090. Cash-in-lieu Requirements.

A. General. The City conducted a parking facility analysis in the fall of 2016 and determined the costs associated with developing new parking facilities to serve the demands of development. While not all potential facilities represented the same potential expenditure, facilities considered likely to be developed by the City required an expected thirty-eight thousand dollars (\$38,000) per space to develop in 2016 dollars.

B. Cash-in-lieu. Mobility improvements serving commercial and mixed-use development are a public amenity and serves the mobility needs of the general population. As such, the mobility needs of the general population can be improved through various means other than the provision of on-site parking spaces, including cash-in-lieu. A cash-in-lieu payment, for those types of development authorized to provide parking via cash-in-lieu, may be accepted by the Community Development Director to satisfy the Parking Requirement, as described in Section 26.515.040, above.

1. Time of payment. The payment-in-lieu of parking shall be due and payable at the time of issuance of a building permit. All funds shall be collected by the Community Development Director and transferred to the Finance Director for deposit in a separate interest-bearing account.
2. Use of funds. Monies in the account shall be used solely for the construction of a public parking facility, transportation and mobility improvements, including vehicles or station improvements, transportation demand management facilities or programs, shared automobiles or programs and similar transportation or mobility-related facilities or programs as determined appropriate by the City.
3. Refunds. Fees collected pursuant to this Section may be returned to the then-present owner of the property for which a fee was paid, including any interest earned, if the fees have not been spent within seven (7) years from the date fees were paid, unless the Council shall have earmarked the funds for expenditure on a specific project, in which case the time period shall be extended by up to three (3) more years. To obtain a refund, the present owner must submit a petition to the Finance Director within one (1) year following the end of the seventh (7th) year from the date payment was received by the City.

For the purpose of this Section, payments collected shall be deemed spent on the basis of “the first payment in shall be the first payment out.” Any payment made for a project for which a building permit is revoked or cancelled, prior to construction, may be refunded if a petition for refund is submitted to the Finance Director within three (3) months of the date of the revocation or cancellation of the building permit. All petitions shall be accompanied by a notarized, sworn statement that the petitioner is the current owner of the property and that the development shall not commence without full compliance with this Chapter and by a copy of the dated receipt issued for payment of the fee.

4. Periodic review of rate. ~~In order to~~To ensure that the payment-in-lieu rate is fair and represents current cost levels, it shall be reviewed every two years. Any necessary amendments to this Section shall be initiated pursuant to Section 26.310.020, Procedure for amendment.

26.515.100. Amendments. Amendments to an approved Mobility and Parking Requirement review by the Community Development Director in coordination with the Engineering and Transportation Departments as needed.

A. Amendments to Trip Reduction Measures. Off-site MMLOS infrastructure measures that have been implemented may not be amended at any time. Off-site MMLOS infrastructure

measures that have not been implemented, and any on-site TDM and MMLOS measures, may be amended as outlined below. Changes shall be reviewed by the Engineering, Transportation, and Community Development Departments to ensure the proposed change is appropriate given the site's context.

1. Insubstantial Amendment. Any amendment to TDM or MMLOS measures resulting in the same or more number of trips mitigated as the original approval may be approved administratively by the Community Development Department, after considering a recommendation from the Engineering and Transportation Departments. A land use application is required, pursuant to Chapter 26.304, *Common Development Review Procedures*. The applicant shall demonstrate how the new measure(s) is appropriate given current site conditions.
2. Substantial Amendment. Any amendment to TDM or MMLOS measures that reduces the number of trips mitigated shall be reviewed by City Council, after considering a recommendation from the Community Development, Engineering, and Transportation Departments. A land use application is required, pursuant to Chapter 26.304, *Common Development Review Procedures*, and the review shall be conducted in a duly noticed public hearing, pursuant to Section 26.304.060(E), *Public Notice*. City Council shall find the following standards are met:
 - a) The proposed change responds to changed site conditions or circumstances, including but not limited to changes to land uses, site topography, or site plan.
 - b) The proposed changes will not adversely impact the immediate vicinity.
 - c) The proposed change meets the original intent of the approved measures.
 - d) The proposed changes have been approved by the Community Development Director.

26.515.110 Appeals. An applicant may challenge a determination made by the City in their enforcement of the requirements of this Chapter by filing with the Community Development Director a written notice of appeal as provided in Section 26.316.030, Appeals procedures, with a full statement of the grounds for appeal. Appeals shall be reviewed by City Council, pursuant to Chapter 26.316, Appeals.

(Ord. No. 17-2005, §1; Ord. No. 32, 2016, §1; Ord. No. 23, 2017, §23)

**RESOLUTION NO. 20
SERIES OF 2018**

**A RESOLUTION OF THE CITY OF ASPEN CITY COUNCIL ADOPTING
POLICIES IN SUPPORT OF AMENDMENTS TO THE LAND USE CODE**

WHEREAS, pursuant to Section 26.310.020(A), a Policy Resolution is required to initiate the process of amending the City of Aspen Land Use Code; and,

WHEREAS, pursuant to Section 26.310.020(A), the Community Development Department received direction from City Council to explore amendments to the City's miscellaneous supplemental regulations; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted Public Outreach with members of the public, local architects, designers, and planners; and,

WHEREAS, the Community Development Director recommended changes to the Miscellaneous Regulations, Definition, Parking and Mobility, Growth Management, Nonconformities, ADUs/Carriage Houses, Variances, Zone Districts, View Planes, and Signs sections of the Land Use Code; and,

WHEREAS, City Council has reviewed the proposed code amendment policy direction, and finds it meets the criteria outlined in Section 26.310.040; and,

WHEREAS, amending the Land Use Code as described below will ensure the ongoing effectiveness and viability of the regulations within the City of Aspen Land Use Code to achieve City Council's policy and regulatory goals; and,

WHEREAS, City Council has reviewed the proposed code amendment policy direction, and finds it meets the criteria outlined in Section 26.310.040; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on February 26, 2018 the City Council approved Resolution No. 20, Series of 2018, by a __ to __ vote, requesting code amendments to the Land Use Code; and,

WHEREAS, this Resolution does not amend the Land Use Code, but provides direction to staff for amending the Land Use Code; and,

WHEREAS, the City Council finds that this Resolution furthers and is necessary for the promotion of public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN AS FOLLOWS:

Section 1: Overall Code Amendment Objectives

The objectives of these code amendments are to:

1. Simplify and update the calculations and measures standards in the Miscellaneous Regulations section of the Land Use Code;
2. Improve the administration and interpretation of the Miscellaneous Regulations section of the Land Use Code;
3. Maintain to the extent possible current development rights and regulations provided by the Land Use Code;
4. Ensure the Parking and Mobility regulations in the Land Use Code deliver the policy objectives identified by Council during the 2016-2017 AACP-LUC coordination process;
5. Provide enhanced aesthetic standards for temporary food vending uses;
6. Ensure that the Land Use Code provides adequate time and a fair process for property owners whose non-conforming properties are destroyed by fire or other non-purposeful acts to repair their property;
7. Provide clear direction to duplex properties as to the affordable housing mitigation requirements for the removal of an ADU that was developed as mitigation;
8. Ensure adequate time from the issuance of a variance for properties to obtain a building permit;
9. Update the view plane legal descriptions to current survey standards;
10. Allow for historic engraved signs to remain and be maintained without allowing non-historic properties to develop engraved signs without a permit;
11. Eliminate typos and errors from the Zone Districts regulations in Part 700 of the Land Use Code.

Section 2: Miscellaneous Regulations Code Amendment Goals by Topic

The goals of the Miscellaneous Regulations code amendments related to “Exterior Features Calculations” are to:

1. Maintain the current gross square footage allowed in the Land Use Code for residential and commercial development;
2. Simplify the distinction between those development features that contribute to the calculations floor area and those that do not;
3. Clarify and simplify the methodology for the calculation of floor area relative to exterior features;
4. Clarify or eliminate terminology to improve comprehension of code language by staff and the public.

The goals of the Miscellaneous Regulations code amendments related to “Grade and Height” are to:

1. Maintain current development rights and restrictions, particularly regarding net lot area and maximum building height;
2. Simplify the definition and methodology for the determination of grade on development sites;
3. Limit excessive grading of development sites to preserve topography and limit environmental and development impacts;
4. Clearly define and reduce the allowed exceptions to height and grade to improve code interpretation and ensure appropriately scaled buildings and sites.

The goals of the Miscellaneous Regulations code amendments related to “Yards and Setbacks” are to:

1. Maintain current development rights and restrictions, particularly regarding the visual and aural impacts of at-grade features within setback areas;
2. Maintain current setback distances for all zone districts;
3. Clarify distinction between setback areas and yard areas;
4. Simplify the description of features permitted in yard and setback areas, while limiting the impacts of those features on adjacent properties.

The goals of the Miscellaneous Regulations code amendments related to “Demolition” are to:

1. Maintain the current proportion of deconstruction which constitutes demolition;
2. Simplify the methodology for calculating which activities and structural elements are included in the definition of demolition;
3. Improve and simplify the system for tracking demolition of properties over time to control the progressive demolition of structures.

Section 3: Parking and Mobility Code Amendment

The goals of the Parking and Mobility code amendments are to:

1. Coordinate the standards for lodge and multi-family zone districts with commercial districts amended during the AACP-LUC coordination process;
2. Ensure appropriate parking and mobility access for multi-family residential development inside and outside of the Infill Area;
3. Ensure appropriate parking and mobility access for lodge development within the Infill Area;
4. Improve the clarity of the language, terminology, and standards in the Parking Mobility section of the Land Use Code.

Section 4: Growth Management Amendment

The goals of the Growth Management code amendments are to:

1. Improve the aesthetic standards for temporary food vending operations;
2. Coordinate the sign allowance for temporary food vending operations with the requirements for other commercial operations.

Section 5: Nonconformities Code Amendment

The goals of the Nonconformities code amendments are to:

1. Provide owners of destroyed properties sufficient time to submit building and land use permitting materials before the expiration of their nonconformity replacement rights;
2. Clarify that the requirement for the retention of a nonconforming use or structure is the submission of building and land use permitting materials, not the issuance of those permits.

Section 6: Duplex ADU Mitigation Code Amendment

The goals of the Duplex ADU Mitigation code amendments are to:

1. Ensure duplexes removing ADUs mitigate fully for the loss of affordable housing;
2. Create parity in the Land Use Code between single-family and duplex properties seeking to remove an ADU.

Section 7: Variances Code Amendment

The goals of the Variances code amendments are to:

1. Provide recipients of variances from land use standards adequate time to prepare and submit permitting documents;
2. Align the timeframe provided for variances to land use standards and the timeframe required to submit for a building permit.

Section 8: View Planes Amendment

The goal of the View Planes code amendments is to:

1. Ensure the accuracy of the legal view plane descriptions.

Section 9: Signs Amendment

The goals of the Signs code amendments are to:

1. Comply with the requirements of the Reed Supreme Court decision;
2. Align the standards in the sign code with Council's goal of maintaining the status quo with respect to business signage;
3. Provide existing engraved signs a means to be maintained without becoming nonconforming.

Section 10: Zone Districts Code Amendment

The goals of the Zone Districts code amendments are to:

1. Clarify language and standards by eliminating errors and ensuring accurate cross-references;
2. Coordinate the regulations and methodologies in Part 500 with the standards in Part 700 of the Land Use Code.

Section 11:

This resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions or ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior resolutions or ordinances.

Section 12:

If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

FINALLY, adopted this 26th day of February, 2018.

A handwritten signature in black ink, appearing to be 'SASUC', written over a horizontal line.

Steven Skadron, Mayor

ATTEST:



Linda Manning, City Clerk

APPROVED AS TO FORM:



James R True, City Attorney



MEMORANDUM

TO: Mayor and City Council

FROM: CJ Oliver, Environmental Health and Sustainability Director

THROUGH: Jessica Garrow, Community Development Director

MEETING DATE: May 13, 2019, 5PM

RE: Ordinance #14 Series of 2019- Banning the Sale of Flavored Tobacco and Nicotine Products in Aspen

SUMMARY:

The attached Ordinance establishes a full ban on the sale of all flavored tobacco and nicotine products, including vaping products, as well as menthol and other flavored chew and cigarettes, in the City of Aspen.

Youth tobacco and e-cigarette users are particularly attracted to flavored nicotine products. From the packaging and marketing of the products to the flavors themselves, they are geared towards youth and adolescents and they are the preferred product among younger users. Candy and fruit flavored cigarettes were banned by the Family Smoking Prevention and Tobacco Control Act in 2009 but menthol cigarettes, flavored chewing tobacco and e-cigarette cartridges/pods were not included in the ban and are available for purchase today. Restricting the sale of flavored nicotine products in Aspen would create an additional barrier for all users trying to obtain these products and could play a preventative role in youth picking up a tobacco or vaping habit. Aspen's existing regulations, particularly raising the age to purchase tobacco/nicotine products to 21, along with a significant tax on tobacco and nicotine are also significant measures to decrease local accessibility to these items to our youth.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed Ordinance, on First Reading.

BACKGROUND: During the March 12th, 2019 work session with Aspen City Council, direction was provided to craft an ordinance that banned the sale of all flavored nicotine products in Aspen including vaping liquids, flavored cigarettes and cigars as well as flavored chewing tobacco. Additionally, Council directed staff to reach out to flavored tobacco retailers to let them know about the proposed ban on flavored products. Staff returned to Aspen City Council on May 6th to update City Council on the results of the outreach efforts and request direction on how to move ahead based on the additional information. Several public health officials from state and

local governments, local physicians, and school administrators spoke at the meeting in favor of a ban on the sale of flavored tobacco and nicotine products.

Tobacco retailers in Aspen were resistant to the notion of a full flavored tobacco product ban due to the impact that it would have on their sales. The retailers did indicate that they would support a vaping liquid ban. One of the retailers has proactively pulled vaping products from their shelves as a measure to protect youth health and another indicated that since the passing of Tobacco 21 in Aspen their sales of vaping products are low.

DISCUSSION: Public health officials at the county and state levels encourage implementing a ban on all flavored nicotine products as it would provide the greatest level of public health protection. Officials from both Pitkin County and CDPHE have indicated that they support moving forward with a full ban because it also offers a stronger model for other communities to implement and it more thoroughly considers broader equity issues. Written comments from various interested parties who support a full ban on flavored nicotine products are provided as attachments to this memo.

In brief, the information available on youth usage rates for e-cigarettes and tobacco use in the Aspen area show a concerning trend, and public health professionals want to take steps to get in front of this trend as soon as possible. Anecdotally, the change to Tobacco 21 has resulted in far fewer youths purchasing tobacco products in Aspen stores. This was a change that will have lasting positive results for the community, particularly youth. An additional action that could also make a difference is to restrict the sale of the items that are most desirable to youth consumers, the products that a significant majority of youth and young adult tobacco users report was their first tobacco or e-cigarette product - flavored tobacco and nicotine.

There are still significant challenges related to restricting youth access to these products as they can be easily purchased online as well as being available in unincorporated areas of Pitkin County outside of the Aspen city limits. Pitkin County has indicated that they will begin to pursue similar restrictions to what Aspen currently has in place including Tobacco 21, retail tobacco licenses as well as potentially looking into a tobacco tax. A flavor ban is not currently on Pitkin County's list for future actions.

FINANCIAL/BUDGET IMPACTS: A full ban on all flavored tobacco will likely have a significant impact on tobacco sales at the retail level as described by the retailers that staff spoke with. That would also have a likely impact on tobacco sales tax dollars collected in Aspen, which will be used to help fund efforts for substance use and cessation programs along with mental health systems.

STAFF RECOMMENDATION:

Staff recommends adoption of the attached Ordinance, on First Reading.

NEXT STEPS: If Ordinance #14, Series 2019 passes on first reading, staff will return for a second reading of the ordinance on May 20, 2019, which is a public hearing. Additionally, staff will

return to council in the Summer of 2019 to present recommendations for the best uses for the tobacco tax dollars that have been collected through the City tax on tobacco and nicotine products. The recommendations will fit into the buckets that Aspen City Council identified as targets for these dollars when the local tax was passed. Those buckets include substance use prevention and cessation, as well as mental health.

RECOMMENDED MOTION (ALL MOTIONS ARE PROPOSED IN THE AFFIRMATIVE):

"I move to adopt Ordinance #14, Series of 2019, adopting a full ban on flavored tobacco and nicotine products in the City of Aspen, on First Reading."

ATTACHMENTS:

Attachment A- Ordinance#14 Series 2019

Attachment B- Flavor Danger (Provided by Pitkin County Public Health)

Attachment C-Written comments from Dr. Kim Scheuer

Attachment D- Resolution on Flavored Tobacco Ban, Aspen Valley Hospital District

Attachment E- Colorado School of Public Health Letter

Attachment F- Public Health Partners Letter

Attachment G- Letter from Aspen High School

Attachment H- Letter from School District Nurse

ORDINANCE NO. 14
(Series 2019)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AMENDING TITLE 13 OF THE MUNICIPAL CODE OF THE CITY OF ASPEN - HEALTH AND QUALITY OF ENVIRONMENT - TO ADD A NEW CHAPTER 13.26 ENTITLED: RESTRICTIONS ON THE SALE OF FLAVORED TOBACCO PRODUCTS, INCLUDING MENTHOL, IN TOBACCO PRODUCT RETAIL ESTABLISHMENTS

WHEREAS, each day, about 2,500 children in the United States try their first cigarette; and another 8,400 children under 18 years of age become new regular, daily smokers.

WHEREAS, 81% of youth who have ever used a tobacco product report that the first tobacco product was flavored.

WHEREAS, flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products.

WHEREAS, menthol cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use.

WHEREAS, flavorings such as mint and wintergreen in smokeless tobacco products encourage new users to start with milder flavors and progress to more full-bodied, less flavored products.

WHEREAS, young people are much more likely than adults to use menthol-, candy- and fruit-flavored tobacco products, including not just cigarettes but also cigars, cigarillos, and hookah tobacco.

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015.

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in thousands of youth-appealing flavors, such as cotton candy and bubble gum.

WHEREAS, the City Council finds that this ordinance furthers and is necessary for the promotion of the public health, safety, and welfare to reduce the appeal of tobacco to youth and to reduce the likelihood that youth will become tobacco users by prohibiting Tobacco Product Retailers from selling, offering for sale, or possessing with the intent to sell, flavored tobacco products.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ASPEN, COLORADO:

Section 1.

TITLE 13 OF THE MUNICIPAL CODE OF THE CITY OF ASPEN - HEALTH AND QUALITY OF ENVIRONMENT – IS HEREBY AMENDED TO ADD A NEW CHAPTER 13.26 ENTITLED: RESTRICTIONS ON THE SALE OF FLAVORED TOBACCO PRODUCTS, INCLUDING MENTHOL, IN TOBACCO PRODUCT RETAIL ESTABLISHMENTS, WHICH CHAPTER SHALL READ AS FOLLOWS:

Chapter 13.26

RESTRICTIONS ON THE SALE OF FLAVORED TOBACCO PRODUCTS, INCLUDING MENTHOL, IN TOBACCO PRODUCT RETAIL ESTABLISHMENTS

Section 13.26.020 DEFINITIONS

A. "Characterizing Flavor" means a Distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, spice; provided, however, that a Tobacco Product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a Distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a characterizing flavor.

B. "Cigar" means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes of this Chapter, cigar includes, but is not limited to tobacco products known or labeled as "cigar," "cigarillo," or "little cigar."

C. "Cigarette" means any product that contains tobacco or nicotine that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- 1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- 2) tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by Consumers as a cigarette; or

3) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, Consumers as a cigarette described above.

4) the term includes all “roll-your-own,” i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by Consumers as tobacco for making cigarettes.

D. "Constituent" means any ingredient, substance, chemical, or compound other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of a Tobacco Product.

E. “Consumer” means an individual who purchases a Tobacco Product or Tobacco Paraphernalia for consumption and not for Sale to another.

F. "Distinguishable" means perceivable by either the sense of smell or taste.

G. “Electronic Smoking Device” means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

H. “Establishment” means any store, stand, booth, concession or any other enterprise that Sells, offers for Sale, or does or offers to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia including, but not limited to any retail location, stand, outlet, vehicle, cart, vending machine, structure or any grounds where Tobacco Products and/or Tobacco Paraphernalia are sold or offered for exchange.

I. "Flavored Tobacco Product" means any Tobacco Product, including Cigarettes, that contains a Constituent or that imparts a Characterizing Flavor.

J. “Ingredient” means any substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the Tobacco Product.

K. "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.

L. “License” means a Tobacco Product Retail License.

M. “Manufacturer” means a Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for Sale or distribution into the United States.

N. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product(s) is sold or offered for Sale to a consumer.

O. "Person" in this Chapter means any natural person, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee or other legal entity.

P. "Sale or Sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner, for any form of consideration or by any means whatsoever.

Q. "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of Tobacco Products.

R. "Tobacco Product" means:

1. any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to Cigarettes, Cigars, little Cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, mints, hand gels; and
2. an Electronic Smoking Device;
3. notwithstanding any provision of subsections (1) and 2) above to the contrary, "Tobacco Product" includes any component, part, accessory or associated Tobacco Paraphernalia of a Tobacco Product whether or not sold separately.
4. The term "Tobacco Product" does not include:
 - (i) any product that contains marijuana; and
 - (ii) any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

S. "Tobacco Product Retailer" means any person who engages in the Sale of Tobacco Products and or Flavored Tobacco Products directly to the public from any store, stand, booth, concession, outlet, vehicle, cart, vending machine, structure or any grounds or any other enterprise that Sells, offers for Sale, or does or offers to exchange for any form of consideration.

T. "Tobacco Product Retailing" means the act of selling, offering for sale or exchanging or offering to exchange for any form of consideration, Tobacco Products and or Flavored Tobacco Products.

Section 13.26.030 SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

A. The Sale or distribution by a Tobacco Product Retailer of a Flavored Tobacco Product(s) is prohibited.

B. A Tobacco Product Retailer, or any of the Tobacco Product Retailer's agents, or employees shall not sell, offer for sale or possess with the intent to sell a Flavored Tobacco Product(s).

C. There shall be a rebuttable presumption that a Tobacco Product is presumed to be a Flavored Tobacco Product if a Manufacturer or any of the Manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to Consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor, including, but not limited to, text, color; and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

D. There shall be a rebuttable presumption that a Tobacco Product Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with the intent to Sell or offer said products for Sale.

Section 13.26.040 COMPLIANCE MONITORING

A. Enforcement of this Chapter shall be monitored by the local police department and the City of Aspen Environmental Health Department.

B. All Tobacco Product Retailers shall be subject to a compliance check for adherence to the provisions of this Chapter at least twice a year with violators being checked more frequently until two (2) consecutive checks are completed without a violation.

Section 13.26.050 VIOLATIONS, PENALTIES AND FINES.

A. Licensee Penalties and Fines. In addition to any other penalty authorized by law, if the City of Aspen Municipal Court determines based on the evidence, that a Tobacco Product Retail Licensee, or any of the Licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law related to the Sale of Flavored Tobacco Products the following penalties shall be imposed on the Licensee:

- 1.** Upon the first violation, a penalty of five hundred dollars (**\$500**)
- 2.** Upon the second violation within thirty-six (**36**) months, a penalty of one thousand five hundred dollars (**\$1500**).
- 3.** Upon the third violation within thirty-six (**36**) months, court appearance shall be mandatory, and the Court may issue a penalty of up to the maximum amount allow by

law or imprisonment for a period of up to one (1) year or both such fine and imprisonment at the discretion of the court.

4. Each day of violation constitutes a separate offense.

B. Suspension or Revocation of Tobacco Product Retail License. In addition to the penalties set forth about, the City of Aspen may suspend or revoke a Tobacco Product Retailer license issued pursuant to Chapter 13.25, pursuant to the terms set forth in such Chapter 13.25. A Tobacco Product Retailer whose License has been suspended or revoked pursuant to Chapter 13.25:

1. Shall not display Flavored Tobacco Products in public view during the time when the License is suspended or revoked; and

2. Advertisements related to Flavored Tobacco Products that promote the sale or distribution of said products from the location that could lead a reasonable person to believe that such products can be obtained from the location shall not be displayed.

C. Remedies Cumulative. Remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. In addition to the remedies provided by this Chapter or by any other law, any violation of this Chapter may be remedied by a civil action, brought by the City Attorney including, but not limited to injunctive relief.

D. Causing, permitting, aiding, abetting or concealing a violation of any provision of this Chapter shall cause the offender to be subject to the penalties set forth herein or in the Aspen Municipal Code.

Section 13.26.070 NO CONFLICT WITH FEDERAL OR STATE LAW. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

Section 2: Litigation

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 3: Severability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

The City Clerk is directed, upon the adoption of this ordinance, to record a copy of this ordinance in the office of the Pitkin County Clerk and Recorder.

Section 4: Effective Date.

This Ordinance shall become effective as of January 1, 2020 and in full force and effect on and after that date.

Section 5: Public Hearing

A public hearing on the ordinance shall be held on the 20th day of May 2019 in the City Council Chambers, Aspen City Hall, Aspen, Colorado, seven (7) days prior to which hearing a public notice of the same was published pursuant to the Aspen Municipal Charter.

INTRODUCED, READ AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 13th day of May 2019.

Steven Skadron, Mayor

ATTEST:

Linda Manning, City Clerk

FINALLY, adopted, passed and approved this ____ day of _____, 2019.

Steven Skadron, Mayor

ATTEST:

Linda Manning, City Clerk

APPROVED AS TO FORM:

James R. True, City Attorney

FLAVOR DANGER

Today, tobacco products come in hundreds of fruit flavors such as little cigars, chewing tobacco, hookah tobacco, or liquids for e-cigarettes. Flavors do not reduce the harm of tobacco products. In fact, flavors can mask the harsh taste of tobacco, making it easier to get hooked on nicotine.

Once-Secret Tobacco Industry Documents Reveal Youth Are Targeted With Flavors

- "It's a well known fact that teenagers like sweet products..."¹
- "New users of smokeless tobacco ... are most likely to begin with products that are milder tasting, more flavored..."²
- "Menthol brands have been said to be good starter products because new smokers appear to know that menthol covers up some of the tobacco taste and they already know what menthol tastes like, vis-à-vis candy"³

Flavored Tobacco Products Attracting (and Addicting) Youth and Young Adults

- At least two-thirds of youth tobacco users report using tobacco products "because they come in flavors I like ." ⁴
- Of teens and young adults who ever used tobacco, 81% of teens and 86% of young adults reported that their first product was flavored.⁴

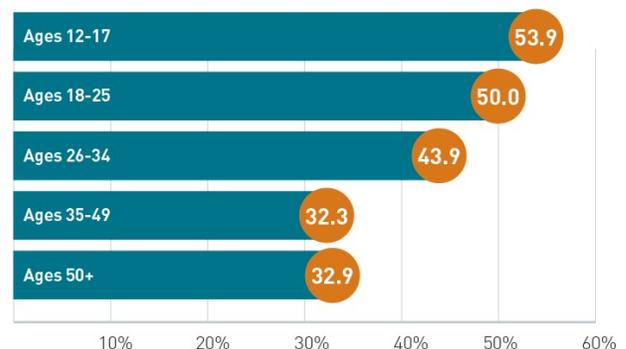
Current Youth Use of Flavored Tobacco

- **More than two-thirds of high school e-cigarette users are using flavored e-cigarettes.**⁵
- **51% of youth e-cigarette use is mint or menthol.**⁵
- **81% of youth who ever tried tobacco chose flavored tobacco as their first tobacco product.**⁵

Local E-Cigarette Use

- Regular use of e-cigarettes among high school students has more than doubled from 21% to 45%.⁶
- More than 2/3 of high school seniors and 1/5 of 8th graders have tried e-cigarettes.⁶
- Colorado has the highest rates of e-cigarette use among youth in the nation, and the Roaring Fork Valley has some of the highest rates in in the state. ^{6 7}
- Youth who use e-cigarettes are 4x more likely to pick up cigarettes. Aspen HAS seen an increase in cigarette use among high school students from 2015 to 2017.^{6 8}

Menthol cigarette use among current smokers in the U.S. by age, 2012-2014



Source: Tobacco control

Federal Law on Flavored Tobacco

Candy and fruit-flavored cigarettes were banned under the *Family Smoking Prevention and Tobacco Control Act* in 2009. **However, all of the products shown below, including menthol cigarettes, non-cigarette smoked tobacco products and smokeless products, were not included in the ban.**



Impact of Flavored Tobacco Restrictions

- The 2009 Family Smoking Prevention and Tobacco Control Act ban on flavored cigarettes was associated with a 17% reduction in the probability of middle and high school youth becoming smokers and a 58% reduction in cigarettes smoked by current youth smokers.⁹
- In 2009, New York City passed a law restricting the sale of most flavored tobacco. By 2013, product sales decreased by 87%.¹⁰

Communities with Flavored Tobacco Restrictions

Two states and over 180 communities have passed restrictions on the sale of flavored tobacco products (laws differ according to product and store type).¹¹

What the City of Aspen Can Do

Pass a comprehensive policy restricting the sale of all flavored tobacco products.

- Restrict all flavors, including mint and menthol, for all types of tobacco products, including e-cigarettes
- Restrict at all access points, including general stores and adult-only retailers.

For more information contact

Risa Turetsky

Pitkin County Public Health

(970) 618-1781

Citations and References

- 1: SWAT (Students Working Against Tobacco) Florida Tobacco Industry Quotes and Facts Related to Flavor Tobacco <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf>
- 2: SWAT (Students Working Against Tobacco) Florida Tobacco Industry Quotes and Facts Related to Flavor Tobacco <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf>
- 3: Tobacco Control, January 2011, Menthol cigarettes and smoking initiation: a tobacco industry perspective https://tobaccocontrol.bmj.com/content/tobaccocontrol/20/Suppl_2/ii12.full.pdf
- 4: Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," JAMA. 2015;314(17):1871-1873.
- 5: National Youth Tobacco Survey, 2018.
- 6: Healthy Kids Colorado Survey, 2017.
- 7: U.S. Food and Drug Administration (FDA) 2018 NYTS Data: A Startling Rise in Youth E-cigarette Use <https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm625887.htm>
- 8: Healthy Kids Colorado Survey, 2015.
- 9: Flavored Tobacco Products, Counter Tobacco <https://countertobacco.org/resources-tools/evidence-summaries/flavored-tobacco-products/>
- 10: Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. Tobacco Control 2017;26:78-84.
- 11: States and Localities with Flavored Tobacco Restrictions, Campaign for Tobacco-Free Kids, 2019.

April 30, 2019

To: CJ Oliver
City Council
cjoliver@cityofaspen.com

Regarding: Banning Flavored Tobacco Products

Dear CJ Oliver and the Members of the City Council,

I was asked to write you about any comments I may have on the proposal to ban flavored tobacco products in the City Of Aspen. As you may be aware, flavored tobacco products are marketed towards children to get them addicted at a young age. Unfortunately, children are particularly susceptible to the damages of tobacco; cancers including lung, tongue, mouth, throat, esophagus, pancreas, in addition to hypertension, strokes, heart disease, emphysema, chronic bronchitis, frequent colds, cavities etc. Children are also more vulnerable to the current marketing strategies used to sell products.

Flavors do not mask the harms of tobacco but rather make the products less harsh so they can become easier to use more frequently. In fact, research shows, many children would not use nicotine products if it weren't for the availability of tobacco in flavors they liked.

Unfortunately, the children of The Roaring Fork Valley and Aspen are not immune to this and we have seen a significant increase in tobacco users over the last several years. This includes tobacco in the forms of vaping and of cigarette use.

This is a health issue that is influenced by greed and disregard of public health. And it targets our most vulnerable citizens. Other cities have successfully banned flavored tobacco products resulting in a decrease in use among youth. Aspen should too.

Sincerely yours,

Kim Scheuer, MD
Board Certified Family Practice,
Board Certified Lifestyle Medicine,
www.dokslifestylemedicine.com
970 309 8528

**ASPEN VALLEY HOSPITAL DISTRICT
RESOLUTION NO. 2019 – 04A
A RESOLUTION IN SUPPORT OF THE CITY OF ASPEN'S ORDINANCE
TO BAN ALL FLAVORED TOBACCO SALES**

WHEREAS, At least two-thirds of youth tobacco users report using tobacco products "because they come in flavors I like; and

WHEREAS, Of teens and young adults who ever used tobacco, 81% of teens and 86% of young adults reported that their first product was flavored; and

WHEREAS, Regular use of e-cigarettes among high school students has more than doubled from 21% to 45%; and

WHEREAS, Colorado has the highest rates of e-cigarette use among youth in the nation, and the Roaring Fork Valley has some of the highest rates in in the state; and

WHEREAS, Aspen has seen an increase in cigarette use among high school students from 2015 to 2017; and

WHEREAS, The 2009 Family Smoking Prevention and Tobacco Control Act ban on flavored cigarettes was associated with a 17% reduction in the probability of middle and high school youth becoming smokers and a 58% reduction in cigarettes smoked by current youth smokers, and

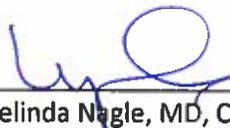
WHEREAS, Local governments are afforded broad discretion in implementing reasonable regulations to protect the public health, safety, and welfare of its community.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Aspen Valley Hospital District that:

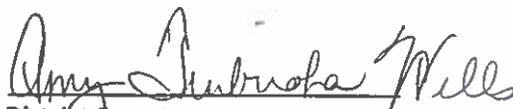
1. It supports the City of Aspen's Ordinance proposed, which hopes to:
 - Pass a comprehensive policy restricting the sale of all flavored tobacco products.
 - Restrict all flavors, including mint and menthol, for all types of tobacco products, including e-cigarettes.
2. Recitals. The provisions of the Recitals set forth in this Resolution are hereby incorporated herein by this reference as if fully set forth.
3. Effective Date. This Resolution shall take effect and be enforced immediately upon its approval by the Board of Directors of the District.

The foregoing Resolution was approved and adopted this 8 day of April.

ASPEN VALLEY HOSPITAL DISTRICT

By: 
Melinda Nagle, MD, Chair

ATTEST:

By: 
District Secretary

May 1, 2019

Dear Aspen City Council:

Thank you for considering legislation that will provide further protections for Aspen youth from the harms of tobacco use and for, once again, providing a model policy for the rest of Colorado. The vaping epidemic seen across our state has drawn attention to the issue of flavored tobacco products and how flavors are used to hook kids on nicotine and create lifetime nicotine addicts and customers.

Below we have provided information that we believe is compelling enough for the Aspen City Council to accept nothing less than a full ban on all flavored tobacco products. There is simply no other way to protect all youth from this dangerous and deadly addiction.

Vaping

- More than two-thirds (67.8 percent) of high school e-cigarette users are using flavored e-cigarettes.¹
- JUUL says it is committed to preventing youth use of its products but the company's 80-plus lobbyists in 50 states are fighting proposals to ban flavored e-cigarette pods, which are big draws for teenagers; pushing legislation that includes provisions denying local governments the right to adopt strict vaping controls; and working to make sure that bills to discourage youth vaping do not have stringent enforcement measures.²
- Colorado has the highest e-cigarette use in the country and Health Region 12 (which includes Aspen) is among the top in the state.^{3,4}

Menthol Cigarettes

- Cigarette smoking causes more than 480,000 deaths each year in the United States. This is nearly one in five deaths.⁵
- It is estimated that 91,000 kids now under 18 and alive in Colorado will ultimately die prematurely from smoking.⁶
- Federal law prohibits the use of characterizing flavorings in cigarettes, **except for menthol**.

¹ FDA 2018

² NYTimes.com: In Washington, Juul Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.<https://nyti.ms/2V27I26>

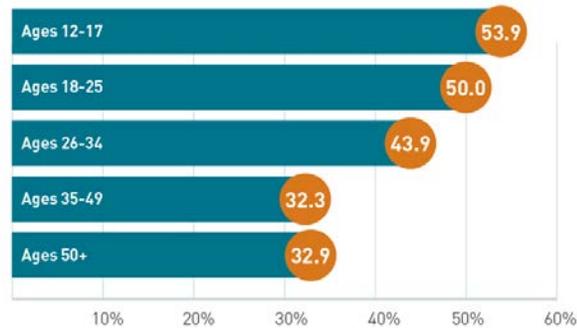
³U.S. Food and Drug Administration (FDA) 2018 NYTS Data: A Startling Rise in Youth E-cigarette Use <https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm625887.htm>

⁴ Healthy Kids Colorado Survey, 2015

⁵ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm

⁶ The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General, 2014

**Menthol cigarette use among current smokers
in the U.S. by age, 2012-2014**



Source: Tobacco control

- Menthol cigarette smoking is more prevalent among smokers who are young⁷, female⁸, part of a sexual minority⁹, or part of a racial or ethnic minority¹⁰. There is also significant menthol use among smokers with mental illness.¹¹
- African-American smokers predominantly use menthol cigarettes. Nearly 9 in 10 African-American smokers (88.5 percent) aged 12 and older use menthol.⁶
- Tobacco companies have long known of menthol's ability to mask the harshness associated with cigarette smoke, increase the ease of smoking, and provide a cooling sensation that appeals to many smokers, particularly new smokers.¹²
- Older industry marketing documents openly discuss the use of flavoring agents in cigarettes to attract the interest of young smokers.¹²

⁷ Giovino GA, Villanti AC, Mowery PD, et al. Differential trends in cigarette smoking in the USA: is menthol slowing progress? *Tobacco control*. 2015;24(1):28-37.

⁸ Caraballo RS, Asman K. Epidemiology of menthol cigarette use in the United States. *Tobacco induced diseases*. 2011;9 Suppl 1:S1.

⁹ Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *American journal of preventive medicine*. 2015;48(1):93-97

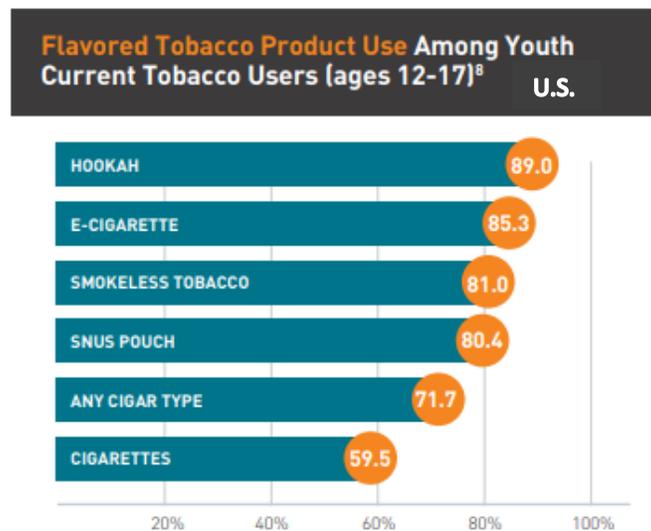
¹⁰ Rock VJ, Davis SP, Thorne SL, Asman KJ, Caraballo RS. Menthol cigarette use among racial and ethnic groups in the United States, 2004-2008. *Nicotine & tobacco research : official journal of the Society for Research on Nicotine and Tobacco*. 2010;12 Suppl 2:S117-124.

¹¹ Hickman NJ, 3rd, Delucchi KL, Prochaska JJ. Menthol use among smokers with psychological distress: findings from the 2008 and 2009 National Survey on Drug Use and Health. *Tobacco control*. 2014;23(1):7-13.

¹² US Surgeon General's Report, March 8, 2012

Other Flavored Tobacco Products

- Nearly 81 percent of youth ages 12 to 17 who had ever used a tobacco product reported that the first product they used was flavored.¹³
- Four of out five youth who were current tobacco product users reported they used a flavored tobacco product.¹²
- Youth use of flavored hookah products is even higher than youth use of flavored e-cigarettes.¹⁴ Older industry marketing documents openly discuss the use of flavoring agents in cigarettes to attract the interest of young smokers
- FDA has proposed some restrictions on flavored tobacco products but they are not comprehensive (e.g. exclude menthol) and will likely take years to implement. Therefore local policy is critical for protecting youth.



Based on the information above, only a comprehensive flavor ban (that includes all tobacco products) would protect all youth from the predatory practices of big tobacco and e-cigarette manufacturers and their youth-friendly products.

¹³ <https://truthinitiative.org/news/hookah-most-popular-flavored-tobacco-product-among-youth>

¹⁴ Source: Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*. 2015;314(17):1871-1873.

Thank you again for taking this important step to protect Colorado's youth. For more information, please contact the Colorado School of Public Health's Tobacco Program at 303-724-4236.

Sincerely,



Jonathan M. Samet, MD, MS
Dean and Professor
Colorado School of Public Health



Cerise Hunt, PhD, MSW
Director
Center for Public Health Practice
Colorado School of Public Health



Tracy Doyle, MPH
Technical Assistance Coordinator
Center for Public Health Practice
Colorado School of Public Health



1400 EYE STREET, N.W. • SUITE 1200 • WASHINGTON, DC 20005
PHONE (202) 296-5469 • FAX (202) 296-5427



**American
Heart
Association®**

April 29, 2019

Mayor Skadron & Aspen Councilmembers,

Thank you for leading the way in protecting Colorado's kids by considering legislation to ban the sale of flavored tobacco in Aspen. Prohibiting the sale of flavored tobacco, including menthol cigarettes, is an important step in protecting Aspen's children from the unrelenting efforts of the tobacco industry to hook them to a deadly addiction. As you are aware, Aspen is the first community in Colorado to consider such legislation. The policy you adopt has the potential to be modeled across the state and therefore carries a great deal of weight. I ask that you consider the policy implications for all of Colorado as you debate the provisions of a flavor ban in Aspen.

Nationally, more than two states and 180 communities have passed restrictions on the sale of flavored tobacco. San Francisco banned the sale of all flavored tobacco products with no retailer exemptions, in 2018. Sacramento is on the verge of doing the same. This is the policy that we support and recommend Aspen adopts for the following reasons:

- In recent years, there has been an explosion of sweet-flavored tobacco products, especially e-cigarettes and cigars. These products are available in a wide assortment of flavors that seem like they belong in a candy store or ice cream parlor – like gummy bear, cotton candy, wild berry and lemonade.
- The tobacco industry has a long history of using menthol cigarettes and other flavored products as “starter” product to attract new users, almost all of whom are under 18. Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners.
- A government study found that 81 percent of kids who have ever used tobacco products started with a flavored product.
- In Colorado, more than a quarter of high school students use e-cigarettes, one of the highest rates in the country. According to national data, 97 percent of high school e-cigarette users have used a flavored e-cigarette in the past month.

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- Among youth who smoke, more than half are smoking menthol cigarettes.
- Tobacco industry marketing, advertising, and promotional strategies for menthol cigarettes are often directed at low-income and minority communities, in addition to youth.

The tobacco industry spends \$140 million annually in Colorado to market its products. We must stay vigilant in protecting Colorado's kids from the tobacco industry's outreach and efforts to addict them. This policy will have a positive impact on public health and will save lives.

Our organization works within the United States and around the world to advocate for public policies proven to prevent kids from using tobacco, help tobacco users quit and protect everyone from secondhand smoke. A ban on flavored tobacco products is just such a policy that will protect kids and save lives. For more information about our policy priorities, please visit our website, www.tobaccofreekids.org.

If you have any questions, please feel free to contact me directly.

Thank you again for your leadership and partnership to protect Aspen's kids.

Respectfully,

Jodi L. Radke
Regional Director
Campaign for Tobacco-Free Kids
970-214-4808
jradke@tobaccofreekids.org

Rebecca Dubroff
State Government Relations Director
American Heart Association
1777 S. Harrison St. | Denver | CO | 80210
M 303.880.7788



ASPEN HIGH SCHOOL 0235 HIGH SCHOOL ROAD ASPEN, COLORADO 81611

970-429-3539

May 3, 2019

Dear Aspen City Council,

Vaping has rapidly become a national problem for teens, and our valley is seeing the impacts of vaping as more young people become addicted. Big tobacco has targeted youth through the allure of flavors; kids do not have to suffer the awful taste of regular cigarettes. Instead, they can ingest the equivalent of one pack of cigarettes per Juul pod in enticing flavors like cotton candy.

Parents, students, and educators are worried about the effects of vaping on our community's youth. We are so grateful that in Aspen you must be 21 to purchase tobacco, but we need to go a step further. Our kids are getting addicted quickly, and realizing, too late, how harmful vaping is, and how difficult it is to stop. A flavor ban, already instituted at Local's Corner and the AABC Conoco, would help to combat the allure of vaping.

AHS has participated in conversations with community and school partners, including our students, from here to Rifle. Our valley has one of the highest tobacco use rates in the state, and vaping is the number one reported substance used at AHS. Our students are clear about what needs to happen: all stores need to be 21 and over for tobacco products, and all stores need to implement a flavor ban. The best way to stop vaping is to never start.

Sincerely,

Tharyn Mulberry, Principal AHS
Sarah Strassburger, Assistant Principal AHS

May 2, 2019

To: CJ Oliver cjoliver@cityofaspen.com

Regarding: Flavored Tobacco Products

Dear Aspen City Council Members,

As the School Nurse of the Aspen School District, I am writing to express my very strong support of the proposal to ban the sale of flavored tobacco products in the City of Aspen. In the school environment, we are teaching, encouraging and practicing healthy behavior choices on a daily basis. We do this with the hope of preventing unhealthy habits and substance addictions in our youth.

It is most concerning that products are created and marketed specifically toward adolescents and young adults that have the ability to cause lifelong addiction challenges and the potential for major negative health consequences.

A review of current data and literature clearly shows that flavored products increase the sale and usage of tobacco at a younger age. I believe that it is the responsibility of our school and community leaders to create barriers, provide education and make appropriate policy decisions around creating a healthful community at large.

Respectfully,

Elise Dreher, BSN RN

Aspen School District School Nurse

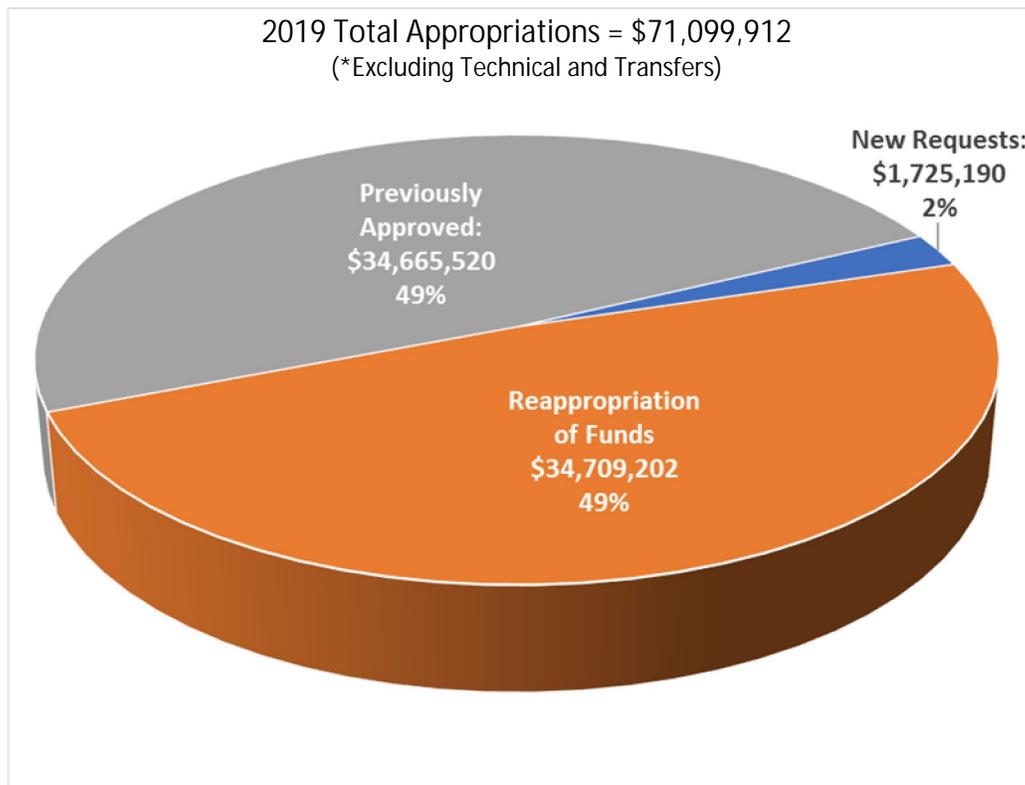
MEMORANDUM

TO: Mayor and City Council
FROM: Don Pergande, Budget Officer
THRU: Pete Strecker, Finance Director
DATE OF MEMO: May 6, 2019
DATE OF MEETING: May 13, 2019
RE: 2019 Supplemental Budget Ordinance No.8 (Series 2019)

Staff is requesting an amendment to the City's 2019 budget that increases total expenditure appropriations from \$150.7 to \$220.7 million (Exhibit A). Of this \$69.9 million increase, \$64.5 million is related to 2018 capital, specific operational projects already approved but not yet completed and technical actions, \$3.7 million is related to budgetary savings through 2018, and \$1.7 million is related to new requests.

Net of interfund transfers, the requested budget authority increases from \$120.4 to \$191.7 million. Interfund transfers are required appropriations between City funds, but do not reflect the true cost of operations.

The exhibit below outlines the supplemental requests impact on the City's overall appropriation authority.



*Including technical and transfers of (\$1,177,530) net appropriations = \$69,922,382

2019 SUPPLEMENTAL BUDGET ORDINANCE

	1st Reading	2nd Reading	Change from 1st Reading
Original Adopted Budget:	\$150,736,285	\$150,736,285	\$0
(1) New Requests:	\$1,632,150	\$1,725,190	\$93,040
Central Savings:	\$491,450	\$491,450	\$0
Departmental Savings:	\$3,244,390	\$3,244,390	\$0
Operational Carry Forward:	\$954,076	\$954,076	\$0
Capital Carry Forward:	\$33,503,620	\$30,019,286	(\$3,484,334)
(2) Re-appropriation of Funds:	\$38,193,536	\$34,709,202	(\$3,484,334)
(3) Previously Approved:	\$31,839,920	\$34,665,520	\$2,825,600
(4) Technical and Transfers:	(\$1,379,630)	(\$1,177,530)	\$202,100
Total Spring Supplemental:	\$70,285,976	\$69,922,382	(\$363,594)
Revised Budget:	\$221,022,261	\$220,658,667	(\$363,594)
Less Interfund Transfers	(\$28,938,660)	(\$28,975,760)	\$37,100
Budget Excluding Transfers:	\$192,083,601	\$191,682,907	(\$400,694)

Changes from 1st Reading to 2nd Reading

New Requests – increased \$93,040. This is a net increase is a combination of \$100,000 for the Wheeler Chiller project and overall employee payouts decreasing by \$6,960 due to additions and deletions.

\$100,000 increase for the Wheeler Chiller project. Background: New funding is requested to replace the main air-cooled chiller at the Wheeler. The mechanical system was to be recommissioned as a part of the larger project in spring of 2020. It was discovered that the existing chiller will require extensive repairs this spring. It was determined that a replacement at this time is appropriate and responsible when looking at the larger mechanical system and past performance history.

\$6,960 reduction to the Employee Payout. Additional employees retired or left the City of Aspen since the 1st reading, increasing the payout amount. After further review, an employee payout was budgeted in the original adopted budget and included in the spring; therefore, the spring amount was deleted from budget ordinance. The employee payout based on these changes is a net reduction of \$6,960.

Capital Carry Forward – decrease of \$3,484,334. The decrease is due to the lag in processing 2018 transactions, which has retroactively impacted the year-end remaining budget in a number of projects.

These postings are a result of preparation for the 2018 audit, which timing overlapped 1st and 2nd reading of the budget ordinance.

Previously Approved – increased \$2,825,600. This increase is made up of Council approved funding for two projects since 1st reading.

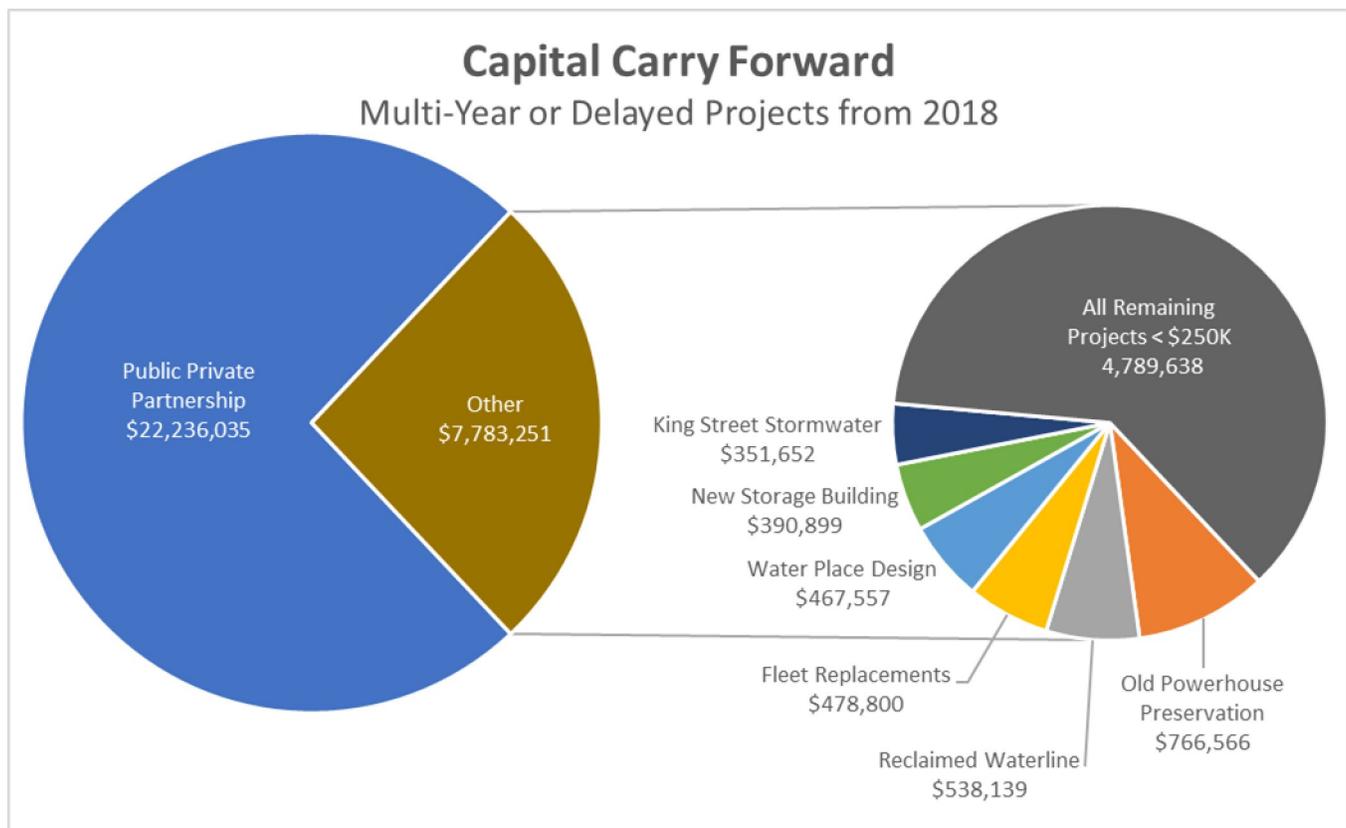
\$379,300 was approved by Council for the Rio Grande Place Road Base Improvements. Per engineering recommendation due to the discovery of poor soils beneath Rio Grande Place, contractors will perform sub excavation of the unsuitable material beneath the road surface to a depth of approximately 2 feet and import a Class 6 road base to ensure a suitable base for the new road.

\$2,446,300 was approved by Council for the City Office – 425 Rio Grande project. \$1,046,300 to fund the new guaranteed maximum price in the construction contract and a \$1,400,000 increase in project contingency.

Technical – increased \$202,100, net zero impact. \$165,000 is 100% reimbursed by CIRSA. This is the accounting action required to appropriate the reimbursement check from CIRSA, to repair the damage to the Chapel trail bridge. \$37,100 is funding for accounting actions needed to transfer funding from one fund to another to consolidate and fund capital projects.

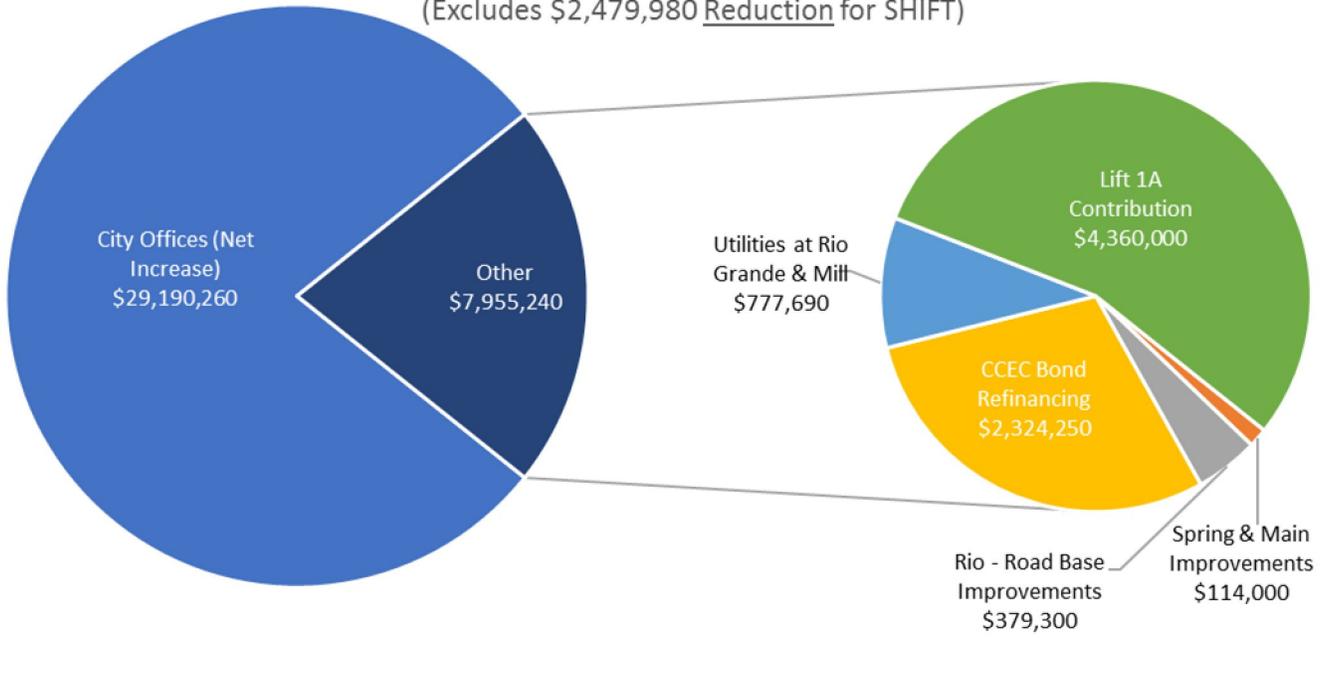
Overview of Spring Supplemental Requests

Acknowledging the significant increase in appropriations included in this Spring Supplemental packet, below are two graphics that highlight the largest drivers of the change: carry forward of the public private partnership affordable housing project and revised timing of the City Offices budgeting.



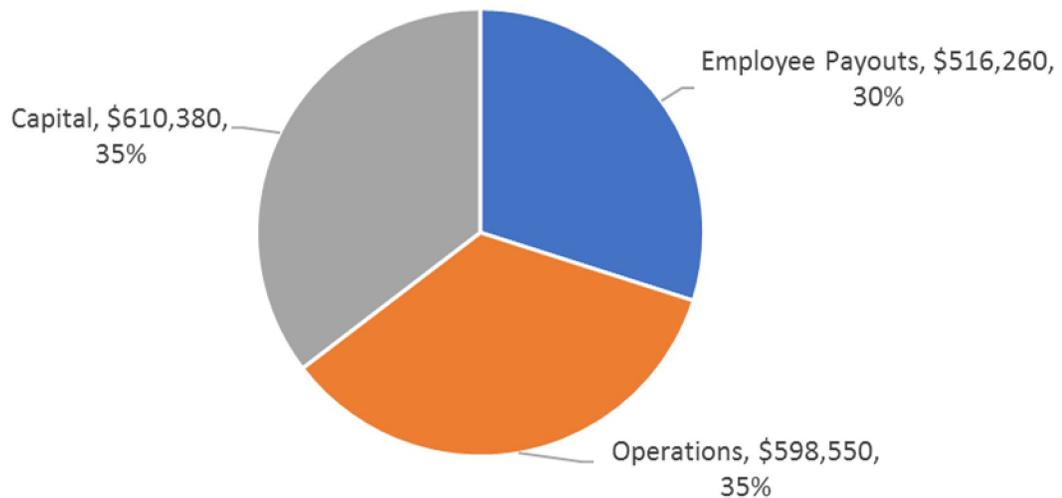
Previously Approved

Approved by Council in Work Sessions Since Budget Adoption
(Excludes \$2,479,980 Reduction for SHIFT)



New requests total \$1.7 million with new capital projects, or additional funding for existing capital projects accounting for 35%, new operational items accounting for 35% and employee payouts/retirement accounting for 30% of the total.

New Requests 2019 Spring Supplemental



ORDINANCE No. 8

(Series of 2019)

AN ORDINANCE APPROPRIATING AN INCREASE IN THE

- ASSET MANAGEMENT PLAN FUND EXPENDITURES OF \$36,621,433;
- GENERAL FUND OF \$2,947,245;
- PARKS AND OPEN SPACE FUND OF \$1,257,728;
- WHEELER OPERA HOUSE FUND OF \$321,883;
- HOUSING DEVELOPMENT FUND OF \$22,646,845;
- KIDS FIRST FUND OF \$123,248;
- STORMWATER FUND OF \$986,502;
- WATER UTILITY FUND OF \$2,921,697;
- ELECTRIC UTILITY FUND OF \$3,284,617;
- GOLF COURSE FUND OF \$200,231;
- TRUSCOTT HOUSING FUND OF \$61,878;
- MAROLT HOUSING FUND OF \$9,550;
- EMPLOYEE HOUSING FUND \$665,909;
- INFORMATION TECHNOLOGY FUND OF \$412,147.

AN ORDINANCE DECREASING AN APPROPRIATION IN THE

- TRANSPORTATION FUND OF \$2,039,375;
- PARKING FUND OF \$499,156.

WHEREAS, by virtue of Section 9.12 of the Home Rule Charter, the City Council may make supplemental appropriations; and

WHEREAS, the City Manager has certified that the City has unappropriated current year revenues and/or unappropriated prior year fund balance available for appropriations in the following funds: Asset Management Plan Fund, General Fund, Parks And Open Space Fund, Wheeler Opera House Fund, Transportation Fund, Housing Development Fund, Kids First Fund, Stormwater Fund, Water Utility Fund, Electric Utility Fund, Parking Fund, Golf Course Fund, Truscott Housing Fund, Marolt Housing Fund, Employee Housing Fund, Information Technology Fund.

WHEREAS, the City Council is advised that certain expenditures, revenue and transfers must be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

Section 1

Upon the City Manager's certification that there are current year revenues and/or prior year fund balances available for appropriation in the above mentioned funds, the City Council hereby makes supplemental appropriations as itemized in the Exhibit A.

Section 2

If any section, subdivision, sentence, clause, phrase, or portion of this ordinance is for any reason invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED AND/OR POSTED ON FIRST READING on the 22nd day of April, 2019.

A public hearing on the ordinance shall be held on the 13th day of May, 2019, in the City Council Chambers, City Hall, Aspen, Colorado.

ATTEST:

Linda Manning, City Clerk

Steven Skadron, Mayor

FINALLY ADOPTED AFTER PUBLIC HEARING on the 13th day of May, 2019.

ATTEST:

Linda Manning, City Clerk

Steven Skadron, Mayor

Approved as to Form:

James R. True, City Attorney

TOTAL CITY OF ASPEN 2019 APPROPRIATIONS BY FUND

Fund Name	*Projected Opening Balance	Total 2019 Revenue Budget	Revenue Supplemental #1	2019 Amended Revenue Budget	Total 2019 Expenditure Budget	Expense Supplemental #1	2019 Amended Exp Budget	2019 Ending Balance
General Governmental Fund								
001 - General Fund	\$17,079,391	\$36,070,360	\$71,000	\$36,141,360	\$35,827,190	\$2,947,245	\$38,774,435	\$14,446,316
Subtotal General Gov't Funds	\$17,079,391	\$36,070,360	\$71,000	\$36,141,360	\$35,827,190	\$2,947,245	\$38,774,435	\$14,446,316
Special Revenue Governmental Funds								
100 - Parks and Open Space Fund	\$8,699,580	\$12,972,200	\$165,000	\$13,137,200	\$15,076,710	\$1,257,728	\$16,334,438	\$5,502,342
120 - Wheeler Opera House Fund	\$30,945,680	\$5,753,240	\$0	\$5,753,240	\$6,834,290	\$321,883	\$7,156,173	\$29,542,747
130 - Tourism Promotion Fund	\$113,804	\$2,893,180	\$0	\$2,893,180	\$2,891,430	\$0	\$2,891,430	\$115,554
131 - Public Education Fund	\$2,469	\$2,898,100	\$0	\$2,898,100	\$2,898,100	\$0	\$2,898,100	\$2,469
132 - REMP Fund	\$5,195,660	\$902,030	\$0	\$902,030	\$1,480,000	\$0	\$1,480,000	\$4,617,690
141 - Transportation Fund	\$6,640,536	\$6,990,730	(\$1,644,000)	\$5,346,730	\$9,449,460	(\$2,039,375)	\$7,410,085	\$4,577,181
150 - Housing Development Fund	\$54,258,346	\$10,065,520	\$0	\$10,065,520	\$7,593,310	\$22,646,845	\$30,240,155	\$34,083,711
152 - Kids First Fund	\$5,888,258	\$2,243,640	\$0	\$2,243,640	\$2,139,330	\$123,248	\$2,262,578	\$5,869,320
160 - Stormwater Fund	\$1,898,597	\$1,334,850	\$28,500	\$1,363,350	\$1,712,710	\$986,502	\$2,699,212	\$562,735
Subtotal Special Revenue Funds	\$113,642,929	\$46,053,490	(\$1,450,500)	\$44,602,990	\$50,075,340	\$23,296,831	\$73,372,171	\$84,873,748
Debt Service Governmental Fund								
250 - Debt Service Fund	\$317,441	\$6,419,210	\$0	\$6,419,210	\$6,413,140	\$0	\$6,413,140	\$323,511
Subtotal Debt Service Fund	\$317,441	\$6,419,210	\$0	\$6,419,210	\$6,413,140	\$0	\$6,413,140	\$323,511
Capital Projects Governmental Funds								
000 - Asset Management Plan Fund	\$26,261,786	\$32,601,630	\$30,637,100	\$63,238,730	\$14,881,350	\$36,621,433	\$51,502,783	\$37,997,733
Subtotal Capital Fund	\$26,261,786	\$32,601,630	\$30,637,100	\$63,238,730	\$14,881,350	\$36,621,433	\$51,502,783	\$37,997,733
Enterprise Proprietary Funds								
421 - Water Utility Fund	\$8,044,863	\$9,158,060	\$175,720	\$9,333,780	\$9,955,470	\$2,921,697	\$12,877,167	\$4,501,476
431 - Electric Utility Fund	\$3,307,833	\$10,586,263	\$2,150,000	\$12,736,263	\$10,993,350	\$3,284,617	\$14,277,967	\$1,766,129
451 - Parking Fund	\$6,283,709	\$4,831,750	\$0	\$4,831,750	\$5,599,380	(\$499,156)	\$5,100,224	\$6,015,235
471 - Golf Course Fund	\$1,008,718	\$2,439,050	\$0	\$2,439,050	\$2,926,140	\$200,231	\$3,126,371	\$321,397
491 - Truscott I Housing Fund	\$632,990	\$2,254,470	\$0	\$2,254,470	\$2,346,220	\$61,878	\$2,408,098	\$479,362
492 - Marolt Housing Fund	\$1,411,326	\$1,312,914	\$0	\$1,312,914	\$968,850	\$9,550	\$978,400	\$1,745,840
Subtotal Enterprise Funds	\$20,689,439	\$30,582,507	\$2,325,720	\$32,908,227	\$32,789,410	\$5,978,817	\$38,768,227	\$14,829,439
Internal Proprietary Funds								
501 - Employee Benefits Fund	\$4,379,201	\$5,502,640	\$0	\$5,502,640	\$5,661,360	\$0	\$5,661,360	\$4,220,481
505 - Employee Housing Fund	\$2,061,656	\$2,453,510	\$24,300	\$2,477,810	\$3,081,980	\$665,909	\$3,747,889	\$791,577
510 - Information Technology Fund	\$961,633	\$2,063,990	\$0	\$2,063,990	\$2,006,515	\$412,147	\$2,418,662	\$606,961
Subtotal Internal Service Funds	\$7,402,490	\$10,020,140	\$24,300	\$10,044,440	\$10,749,855	\$1,078,056	\$11,827,911	\$5,619,019
ALL FUNDS	\$185,393,477	\$161,747,337	\$31,607,620	\$193,354,957	\$150,736,285	\$69,922,382	\$220,658,667	\$158,089,767
<i>Less Interfund Transfers</i>		\$30,318,290	(\$1,342,530)	\$28,975,760	\$30,318,290	(\$1,342,530)	\$28,975,760	
NET APPROPRIATIONS	\$185,393,477	\$131,429,047	\$32,950,150	\$164,379,197	\$120,417,995	\$71,264,912	\$191,682,907	\$158,089,767

*Projected Opening Balance - numbers are still being finalized

Request Title	Request	Justification
000 - Asset Management Plan Fund; Engineering		
Critical Pedestrian Connection - Bleeker Street	\$126,500	A sidewalk connection on the south side of Bleeker Street between Garmisch Street and Aspen Street that will connect the Yellow Brick building to joining sidewalks. This includes three ADA ramps, 8 tree relocations, a light relocation and designing/investigating the second phase that would connect the walk to the Red Brick building. Council indicated during the January 8th Work Session that Bleeker Street should be a priority. <u>One-time.</u>
\$126,500		
001 - General Fund; Human Resources		
Recruiting Resources	\$22,600	HR is requesting additional funding to cover web-based recruitment and social media costs, both of which have been previously covered through City Manager's Central Savings. HR is also requesting additional costs to cover fees associated with the increased number of background checks that need to be completed for new hires. Changing workforce demographics and technology have shifted how we search for applicants and how applicants find our open positions, along with a near record low unemployment rate (3.9% nationally). According to a recent report from ICMA, 62% of applicants use online job boards to find new job opportunities, with the top three online job boards for local government being Indeed, Governmentjobs & LinkedIn (all used by HR). HR is also actively reaching out to passive candidates through LinkedIn, etc. The current HR recruitment budget only captures the standard recruitment package focused on newspaper ad costs. Having recently moved away from Oracle consultants for technology assistance related to our web-based performance evaluation and recruitment system (Taleo), HR uncovered Recruiting Dash as a cost-effective consultant who specializes in Taleo. HR averages 3 tickets a month which reinforces the need to continue services with technology related to Recruiting Dash. If the Taleo recruitment system has a technical issue it prohibits applicants from applying. This support system helps HR maintain a seamless applicant experience. <u>Ongoing.</u>
Employee Assistance Program	\$13,000	The City's Employee Assistance Program (EAP) provides behavioral health services for our city employees and dependents. Recently, HR increased the amount of counseling sessions from 5 to 8 as a pilot program and covered the expenses through its carry forward savings and thereafter through central savings. In our past city-wide surveys, employees have consistently validated their appreciation of this benefit while on the HDHP (health) plan. The employee feedback and metrics support maintaining the benefit long term. CoA utilization is the highest amongst the large employers in the Valley. Moreover, the CoA is above the benchmark data of 95 visits annually, and the CoA is at 128.5 annually. For this current year, TRIAD is predicting above threshold usage of approximately 161.5 sessions. The HR department continues to support employee's and their families mental health wellbeing as a benefit through innovative approaches such as this one. Larger employers have begun moving from 5 to 8 visits based on our successful model. This funding request fills the gap for funding in moving from 5 visits to 8 visits. <u>Ongoing.</u>
\$35,600		
001 - General Fund; Mayor and Council		
City Manager Executive Search Firm	\$43,000	The City of Aspen is seeking proposals for recruitment services from qualified executive services to assist City Council and Mayor in the national selection of a new City Manager. This process includes but is not limited to meeting with City Council and key stakeholder groups as necessary to facilitate the development of a comprehensive candidate profile along with extensive and thorough recruitment and selection activities. Specifically, the scope of work includes: development of a communication plan, advertising & marketing, candidate pool development, review of candidates, coordination and completion of the interview processes, providing progress Reports & timelines, reference and background checks, defining evaluation/selection criteria, and negotiations & follow-up. Lastly, the \$8,000 is included as travel expenses for finalists. <u>One-time.</u>
\$43,000		

Request Title	Request	Justification
001 - General Fund; Community Development - Planning / Building		
Wireless Facilities Design Guidelines and Public Outreach	\$75,000	Staff requests additional funds to ensure the City has robust requirements and design guidelines for new wireless infrastructure. This is in response to the changed rules from the state and federal governments regarding wireless facilities. A design guidelines document will provide detailed construction, location, and aesthetic requirements for all wireless deployments in the right-of-way. Additional work on requirements for private properties relating location, heights, and design are also anticipated to be part of this work. Some changes to internal processes to coordinate right-of-way and building permits with the master license agreements is also needed and would be supported by this work. Finally, community engagement on this topic is proposed. The funds will enable staff to provide information to the community about the changed local regulations in response to state and federal rules, as well as provide an opportunity for the community to weigh in on other changes they desire. <u>One-Time.</u>
	\$75,000	
001 - General Fund; Asset Management		
Interim Office Space	\$109,100	The City of Aspen Office Shuffle - This request is to fund the operating costs for the Obermeyer office space: lease is \$74,000, cleaning services is \$11,000, internet and utilities is 11,300 and other services is \$12,800 for a total of \$109,100 in operational costs for the office space. Background: Asset Management Department took over the APD Obermeyer office space after APD moved into the new APD facility. Environmental Health moved into the office spaces in the Old Powerhouse building after Asset Management moved into the Obermeyer space. This funding is needed until the new City offices are constructed and Asset Management can move in. <u>Ongoing.</u>
	\$109,100	
001 - General Fund; Police		
Juvenile Fund Donation	\$2,000	<u>Net Zero Impact:</u> A donation by the Locher and Ziff family towards our Juvenile Fund. This money helps to support police department efforts with local kids, such as Picnic in the park, bike rodeo and other outreach and activities we do for the kids in our community. <u>One-time.</u>
	\$2,000	
001 - General Fund; Environmental Health		
Radon Reimbursement Grant	\$4,650	<u>Net Zero Impact to CoA:</u> Requesting budget authority for a radon reimbursement grant budget of \$4,650. With this grant, staff provides radon test kits and education to residents in Aspen. Due to this grant, the EH&S dept. will be able to send 2 staff to the EPA Radon Stakeholder Conference in April. Also, staff will provide 2 trainings to the public on radon resistant new construction and radon awareness in real estate transactions. As part of the City's Radon Program, staff will assist homeowners with high radon by providing information on how they can lower their lung cancer risk by installing radon mitigation systems to levels below the EPA action level of 4 pCi/L. Radon grant dollars also cover the cost of the department's multi-media outreach campaign on radon, including newspaper ads, banners on Main St and informational posters posted throughout the community. <u>One-time.</u>
	\$4,650	
001 - General Fund; City Manager, ComDev, Police		
Employee Payouts	\$410,720	Per City policy, payout of employee accrued grandfathered benefits, PTO and sick leave; plus in 2019, additional payouts for contract terms for the previous City Manager and other City of Aspen employees. <u>One-time.</u>
	\$410,720	

Request Title	Request	Justification
100 - Parks and Open Space Fund		
Grindlay Bridge Repairs	\$50,000	This is an existing project from 2018 originally budget for \$40,000 with \$19,000 of work spent to-date. Staff determined the original project plan was not appropriate given the environmental sensitivity of the Roaring Fork river in that area. The original project scope included complete tear down of the existing bridge structure with heavy equipment operating in and around the river. Additionally, access for the heavy equipment necessary for the original project design was an issue. The design and plans were reworked resulting in a less intrusive approach and the new project budget is estimated to be \$90,000. <u>One-time.</u>
Employee Payouts	\$42,930	Per City policy, payout of employee accrued grandfathered benefits, PTO and sick leave. <u>One-time.</u>
\$92,930		
120 - Wheeler Opera House Fund		
Main Air Cooled Chiller - Replacement	\$100,000	New funding request to replace the main air cooled chiller at the Wheeler. The mechanical system was to be recommissioned as apart of the larger project in spring of 2020. It was discovered that the existing chiller will require extensive repairs this spring. It was determined that a replacement at this time is appropriate and responsible when looking at the larger mechanical system and past performance history.
Shining Mountains Film Festival (Wheeler)	\$44,200	Shining Mountains Film Festival will be produced by Wheeler, in partnership with Aspen Film and a local advisory committee. Funds support the production of the festival as the third festival under the Wheeler umbrella. Content focuses on indigenous people's film programming produced in October annually. The 2019 festival will receive an estimated 75% WRETT subsidy. Offsetting revenue of \$11,000 is estimated. <u>Ongoing.</u>
\$144,200		
141 - Transportation Fund		
Rubey Park-Custodial/Cleaning Services	\$35,000	RFTA and the City share a custodial/cleaning contract for Rubey Park. In 2018 RFTA went through an RFP process for a contract for custodial services to a new vendor. The cost of the custodial service with the new vendor increased significantly. A supplemental request for 2019 of \$35,000 is needed for the custodial services at Rubey Park. <u>Ongoing.</u>
Security Cameras for Transit Shuttle Vehicles	\$25,000	All full-size City buses are equipped with security cameras, but the smaller City shuttle vehicles do not. Due to some recent incidents on board the City shuttles, RFTA has recommended that security cameras be installed. These cameras will assist with investigating incidents involving passengers behaving badly, accidents, or other safety related incidents. <u>One-time.</u>
\$60,000		
150 - Housing Development Fund		
Foreclosures and Property Buy Backs	\$250,000	Funding request is due to potential increase in foreclosures and property buy backs.
\$250,000		
160 - Stormwater Fund		
Mail Trail Storm Pipe Replacement Project	\$118,000	An additional \$118,000 is needed to complete the project. Since the fall supplemental request the project has encountered the following obstacles and opportunities, which have created the need for additional funds: The bedding material for the existing pipe was not acceptable and needed to be replaced, Custom stairs were built to accommodate an additional trail closure, the bypass pumps were needed for an additional month, thawing machines were needed during extremely cold temps in December and January, contractor was asked to do some additional grading outside of the original limits of construction. A concrete sidewalk will be replaced in this area, and landscaping costs have increased to cover the additional disturbed areas. Background: The funds currently appropriated for this project are \$827,000. \$500,000 originally budgeted and \$327,000 requested and approved in Fa ¹¹ Supplemental. This new request brings the project estimate to \$945,000. <u>One-time.</u>

Request Title	Request	Justification
King Street Infrastructure Improvements	\$95,880	In December of 2018, Council approved the contract of \$425,000. This contract plus \$32,000 for additional outreach, inspections and testing brings the revised estimate of this project to \$458,000. This project improves the storm sewer and sidewalk installation to alleviate flooding and create pedestrian connectivity. Background: Currently there is \$362,120 for inlet, pipe design and sidewalk at King Street, of which \$60,000 is funded from the AMP fund. In 2018 the bid came in higher than the original estimate. The contract was presented and approved by Council. One-time.
\$213,880		
421 - Water Utility Fund		
Employee Payouts	\$13,300	Per City policy, payout of employee accrued grandfathered benefits, PTO and sick leave. One-time.
\$13,300		
431 - Electric Utility Fund		
Employee Payouts	\$5,700	Per City policy, payout of employee accrued grandfathered benefits, PTO and sick leave. One-time.
\$5,700		
451 - Parking Fund		
30 Additional Parking Spaces	\$95,000	Funding request is for design services and land use entitlements for the development of additional parking in the lower level of the Rio Grande Parking Garage.
\$95,000		
471 - Golf Course Fund		
Employee Payouts	\$43,610	Per City policy, payout of employee accrued grandfathered benefits, PTO and sick leave. One-time.
\$43,610		
TOTAL NEW REQUESTS	\$1,725,190	

Fund/Department	Central Savings "10%"	Department Savings "50%"
<i>City Manager (114)</i>	\$345,100	\$98,120
<i>Human Resources (115)</i>	\$0	\$540
<i>City Clerk (113)</i>	\$0	\$42,880
<i>City Attorney (116)</i>	\$0	\$78,990
<i>Finance (117)</i>	\$15,460	\$258,430
<i>Planning (122)</i>	\$6,550	\$141,780
<i>Building (123)</i>	\$0	\$20,870
<i>Environmental Health (431)</i>	\$20	\$77,060
<i>Police (221)</i>	\$20,720	\$405,350
<i>Streets (321)</i>	\$180	\$379,700
<i>Special Events (532)</i>	\$980	\$152,740
<i>Recreation / ARC / AIG (Based on Subsidy) - 542</i>	\$23,550	\$161,570
<i>Red Brick Center for the Arts (552)</i>	\$14,540	\$72,720
001 - General Fund	\$427,100	\$1,890,750
100 - Parks and Open Space Fund	\$0	\$140,320
120 - Wheeler Opera House Fund	\$0	\$90,870
141 - Transportation Fund	\$1,400	\$130,910
152 - Kids First Fund	\$3,150	\$106,110
160 - Stormwater Fund	\$19,420	\$98,590
421 - Water Utility Fund	\$26,400	\$254,880
431 - Electric Utility Fund	\$6,830	\$204,570
451 - Parking Fund	\$0	\$101,690
471 - Golf Fund	\$750	\$47,710
510 - Information Technology Fund	\$6,400	\$177,990
Total Savings to be appropriated	\$491,450	\$3,244,390

The purpose of allowing carryforward savings is to provide an additional incentive for frugality by operating departments. Unlike traditional governments, which have a “use it or lose it” approach to annual operating budgets, Aspen’s policy encourages departments to create savings in their annual operating budgets. Savings in annual operating budgets are distributed as follows:

- 50% of the savings are carried forward into the appropriate department’s savings account.
- 10% is allocated to a Central Savings account.
- 40% is returned to the appropriate fund balance.

Carryforward Savings represent 50% of the previous year’s operating budget savings from individual Departments or Funds. Departments and Funds are allocated these amounts as a reward to finding efficiencies in their operations that allow them to meet their operating goals while spending less than their appropriations. Prior year savings that are not expended are maintained in full and appropriated every year unless directed otherwise by the City Manager. These appropriations can be spent on items related to the Department’s or Fund’s mission but may not be used for ongoing expenditures. In addition, if a particular expenditure was denied as part of the budget process, departmental savings may not be used for this purpose without City Manager approval. If the expenditure is to exceed \$10,000, the City Manager must authorize the expenditure. Departments and Funds can accrue these savings to a maximum of 15% of their operating budgets.

**The above information is from the CoA financial policies, adopted December 11, 2017.*

Department / Project	Request
001 - General Fund; Planning / Building Department	
Uphill Economy - Staff requests that unspent Uphill funds from 2018 be carried forward to support implementation of Council's Uphill Economy Top Nine Goal. The 2017 Uphill Economic Development Plan provided prioritized short-, medium-, and long-term action items for the implementation of the plan. Of those, a top priority is the development of a four-season Uphill Recreation Plan (Rec Plan), promotion of Aspen as an Uphill R+D center with an uphill industry forum, building the uphill events schedule, and supporting regional economic diversification. These carry forward funds will enable the Department to continue the ongoing activities associated with this project.	\$94,120
Historic Property Inventory - Council approved \$25,000 in supplemental funding to the Department's 2016 budget for the historic property inventory project. Because of staff shortages and other Department priorities, work did not begin until 2017. These funds are required to finish the project in 2019. Any additional funds required will come from Department savings.	\$2,830
Historic Preservation Review Sheets - In 2018, Council approved moving forfeited bond funds into ComDev's operating budget to create new HPC sheets in an effort to prevent the issues that arose with an historic property where the work was contrary to its historic preservation approvals and permit. Phase 1 of this project was completed in 2018, and resulted in a number of suggested Phase 2 implementation steps, which will be completed in 2019.	\$14,947
Historic Preservation Benefits Outreach - Staff did not spend the \$10,000 allocated to the project because we were able to keep outreach costs down by developing surveys and outreach info in-house. However, following the adoption of the code amendments (anticipated in Spring 2019), additional outreach to HPC and impacted community members is anticipated. This will include creation of additional documents that outline the updated code changes and provide a more streamlined process for historic projects.	\$10,000
Census Organizing Project - In 2018, Council approved the Census Organizing Project to develop and execute a plan for the City of Aspen to assist with the 2020 U.S. Census. These funds need to be carried forward in order to complete the project and support the City's collaborative efforts with Census project partners valley-wide.	\$10,686
Electronic Permit System Training - Council previously approved these funds in conjunction with the implementation of the City's new permits management system. Within the next 3 months, the entire system will be going live. The funds will be used to train both staff and stakeholders in the system's operation.	\$35,605
File and Plan Set Scanning - Council approved \$275,000 in supplemental funding for the Department's 2016 budget to award a contract to digitize all of the Building Department's address files and building plan sets. About \$50,000 was for temporary labor to prepare the files for scanning and to create the metadata associated with the files. ComDev has been able to absorb the labor costs for this project from its labor budget due to staff vacancies. When we started this project, all we had was the linear feet of shelving that housed address files and plan sets; we did not have an accurate count of pages to be scanned. As the contract cost is by page, we could only estimate the project costs. In addition, we didn't stop accepting paper plan sets until 2017 and we still haven't gone live with our new permitting system, so our inventory of paper files has continued to grow. The remaining funds originally approved for this project are now needed to pay for additional scanning costs.	\$72,339
	\$240,527
<i>SPECIFIC OPERATIONAL CARRY FORWARD REQUESTS</i>	<i>\$240,527</i>
Aggregate Equipment/Maintenance/Repair Carry Forwards	\$352,640
Aggregate PC Replacement Carry Forwards	\$239,913
Aggregate Workstation Replacement Carry Forwards	<u>\$120,996</u>
<i>OTHER OPERATIONAL CARRY FORWARD REQUESTS</i>	<i>\$713,549</i>
TOTAL OPERATIONAL CARRY FORWARD REQUESTS	\$954,076

Department / Project	Lifetime Budget	2019 Carry Forward Request
000 - Asset Management Plan Fund; Finance		
50503_Multi-Function Machine - Finance	\$7,000	\$7,000
	\$7,000	\$7,000
000 - Asset Management Plan Fund; Planning		
50259_Electronic Permitting System	\$699,350	\$93,079
	\$699,350	\$93,079
000 - Asset Management Plan Fund; Engineering		
50865 Spring Street Intersection Improvements	\$179,583	\$163,743
50464_Castle Creek Bridge / Hallam Street Improvement	\$5,381,312	\$86,212
50844 Phase 1 Main St Improvements to signals with CDOT Coordination	\$40,000	\$40,000
50473 Paving 4th Street Design and Construction	\$110,000	\$33,300
50485 Streets to Trails	\$210,000	\$21,798
50842 City Survey Monument Maintenance	\$20,000	\$20,000
50477 Ice Garden Drainage Improvements	\$93,000	\$15,300
50010_Cemetery_Snowbunny_Mountain View Intersection Improvements	\$28,132	\$9,237
	\$6,062,027	\$389,590
000 - Asset Management Plan Fund; Police		
50829 Electrical Restraint Device	\$23,000	\$23,000
	\$23,000	\$23,000
000 - Asset Management Plan Fund; Streets		
50833 General Fund Departments Fleet - 2018	\$781,532	\$478,800
50834 Exterior Streets Facilities 2018	\$42,175	\$42,175
	\$823,707	\$520,975
000 - Asset Management Plan Fund; Recreation		
50798 Plumbing - ARC - 2018	\$140,000	\$129,236
51110 Red Brick Arts - Boiler	\$95,000	\$95,000
50053_Electrical - Aspen Ice Garden	\$294,283	\$20,000
50796 ARC Paving	\$20,000	\$20,000
50038_Interior - Aspen Recreation Center	\$65,000	\$17,425
50797 ARC Siding	\$15,000	\$15,000
50386_LIA Scoreboard Replacement	\$30,000	\$14,136
51105 ARC Boiler Installation	\$90,000	\$10,273
50355 AIG Sewer Liner	\$33,000	\$7,334
50799 POS Equipment Replacement - 2018	\$6,000	\$3,005
50801 Upgrades to Technology - 2018	\$35,000	\$757
50357 Water Heater Replacements	\$14,000	\$2,404
	\$837,283	\$334,570
000 - Asset Management Plan Fund; Asset Management		
50060_Old Powerhouse Preservation Project	\$3,551,700	\$766,566
50074_Pedestrian Mall - Planning and Design (ONLY)	\$1,135,530	\$223,612
50064_APD Project	\$22,861,668	\$55,881
	\$27,548,898	\$1,046,059

Department / Project	Lifetime Budget	2019 Carry Forward Request
100 - Parks and Open Space Fund		
50309_Castle Creek Music School Trail	\$875,000	\$125,000
50285_Cozy Point Grading/Drainage Improvements	\$180,000	\$109,970
50105_Burlingame Phase II Parks	\$1,136,465	\$98,782
50284 Burlingame Trail Network Development	\$125,000	\$77,295
50872 John Denver Sanctuary	\$94,579	\$60,519
50779 Oklahoma Flat Trail Railing Replacement	\$55,000	\$55,000
50877 Bicycle Master Plan and Improvements - 2018	\$74,500	\$54,224
50780 Fleet - Parks - 2018	\$591,500	\$47,238
50770 Cozy Point Irrigation Improvements	\$50,000	\$42,490
50771 Cozy Point Ranch Riding Arena Improvements	\$50,000	\$41,615
50333 Maroon Creek Road Trail Development	\$100,000	\$40,000
51111 Lift 1A/Dolinsek Planning	\$30,000	\$19,247
50297_Parks Site Mechanical	\$21,800	\$21,800
50289_Grindlay Bridge Repairs	\$40,000	\$20,482
50306 Cozy Point Electrical Upgrade	\$35,000	\$16,616
50772 Archery Range Improvements	\$15,000	\$15,000
50314 Infield Renovation - Out Years	\$53,000	\$12,000
50263_Core City Network - Parks - 2016	\$2,800	\$2,200
	\$3,529,644	\$859,478
120 - Wheeler Opera House Fund		
50512 Orchestra Seating Replacement	\$255,500	\$53,689
50792 Assistive Listening Loop System Update	\$20,000	\$19,271
50264_Core City Network - Wheeler - 2016	\$2,210	\$2,210
	\$277,710	\$75,170
141 - Transportation Fund		
51109 CMAQ Grant for WE-Cycle Stations and Equipment	\$180,000	\$180,000
50881 Car-to-Go Expansion	\$60,000	\$60,000
50534_Shuttle Replacement - 2017	\$416,000	\$31,652
	\$416,000	\$271,652
150 - Housing Development Fund		
50542_PPP Development Rental Housing	\$25,650,000	\$22,236,035
50260_ACI - Repair and Renovation Project	\$3,257,030	\$160,440
	\$28,907,030	\$22,396,475
160 - Stormwater Fund		
50880 King Street Stormwater System	\$362,120	\$351,652
50130_Aspen Mtn Drainage Basin Imp. - Garmisch	\$827,000	\$81,485
50129_Aspen Mtn Drainage Basin Improvements	\$250,506	\$67,258
50849 Master Planning - River Management Plan Phase II	\$60,000	\$60,000
50850 Master Planning - Riparian Area Master Plan	\$60,000	\$60,000
50126_SW Master Planning 2016	\$225,000	\$31,637
	\$1,784,626	\$652,032

Department / Project	Lifetime Budget	2019 Carry Forward Request
421 - Water Utility Fund		
50135_Reclaimed Waterline Completion at ACSD	\$1,742,910	\$538,139
50132_New Equipment Storage Building	\$400,000	\$390,899
50568 Thomas Reservoir Valves	\$120,000	\$120,000
50745 Backwash Pond - Master Plan & Solids Mitigation	\$1,110,000	\$94,232
50137_Fire Mitigation Upgrades	\$248,000	\$86,339
50748 Water Campus Line Improvements	\$80,000	\$45,000
50565 Castle Creek Headgate/Pipeline	\$160,000	\$71,191
50747 PRV Replacements	\$120,000	\$71,111
50749 Water System Integrity Projects	\$225,000	\$60,000
50571 12 Inch Line to Tiehack Tank Feed	\$1,100,000	\$59,423
50153_Water Rate Study & Infrastructure Update	\$110,000	\$57,012
50757 Reservoir Expansion - Leonard Thomas	\$1,320,000	\$55,000
50758 West Plant Controls	\$50,000	\$50,000
50755 Gaging Stations - 2018	\$40,000	\$40,000
50556_Water Site Maintenance	\$125,000	\$34,872
50586 Well Use Masterplan	\$75,000	\$22,500
50756 Water System Model	\$75,000	\$13,354
50265_Core City Network - Water - 2016	\$8,240	\$4,203
	\$7,109,150	\$1,813,275
431 - Electric Utility Fund		
50184_Micro Hydro Maroon / Castle Creek	\$600,000	\$75,000
50874 Fleet - Electric - 2018	\$245,000	\$245,000
50766 Electric System Replacement - 2018	\$200,000	\$90,176
50765 Electric AMP Master Plan	\$100,000	\$86,814
50595 Other Renewable Opportunities - 2018	\$100,000	\$50,000
50266_Core City Network - Electric - 2016	\$2,580	\$2,580
	\$1,247,580	\$549,570
451 - Parking Fund		
50267_Core City Network - Parking - 2016	\$5,600	\$5,600
	\$5,600	\$5,600
471 - Golf Course Fund		
50783 Fleet - Golf - 2018	\$154,000	\$47,408
50784 Facility Work - Golf and Nordic Clubhouse	\$104,400	\$16,759
50203_Fleet - Golf - 2016	\$135,250	\$10,000
50197_Ditch Reconstruction	\$30,000	\$10,000
50198_Exterior - Golf and Nordic Clubhouse	\$7,400	\$7,400
50883 Rental Clubs - 2018	\$20,000	\$6,409
50271_Core City Network - Golf - 2016	\$5,600	\$5,600
	\$456,650	\$103,576
491 - Truscott Housing Fund		
50854 Truscott Snow Removal Equipment Replacement	\$10,000	\$10,000
50855 Plumbing Building 100 Office/Clubhouse - 2018	\$8,100	\$8,100
	\$18,100	\$18,100

Department / Project	Lifetime Budget	2019 Carry Forward Request
505 - Employee Housing Fund		
50681_ Water Place Phase II - Design	\$550,000	\$467,557
50231_540 Employee Housing - Construction	\$5,426,830	\$174,052
	\$5,976,830	\$641,609
510 - Information Technology Fund		
51107 Streets Generator	\$30,000	\$17,606
50879 Community Broadband – Create Aspen MeetMe Center	\$86,000	\$82,858
50819 Microsoft Active Directory Upgrade	\$18,150	\$18,150
50237_Galena Plaza Fiber	\$125,000	\$80,177
50811 IT Firewall Refresh	\$44,000	\$19,685
	\$303,150	\$218,476
TOTAL CAPITAL CARRY FORWARD REQUESTS	\$86,033,335	\$30,019,286

2019 Spring Supplemental
Previously Approved Requests

Exhibit F

Department / Description	Amount	Subtotal
000 - Asset Management Plan Fund; Asset Management		
51077 City Offices 517 / 204	(\$6,500,000)	
51112 City Offices - 425 Rio Grande (includes new funding of \$2.44M approved by Council on May 6,	\$33,040,260	
51114 City Offices - Existing Rio Grande Building	\$1,200,000	
51113 City Offices - Armory Renovation	\$1,450,000	
Lift 1A contribution - Voters' approved	\$4,360,000	
		\$33,550,260
000 - Asset Management Plan Fund; Asset Management		
Rio Grande Place Road Base Improvements: Per engineering recommendation due to the discovery of poor soils beneath Rio Grande Place, contractors will perform sub excavation of the unsuitable material beneath the road surface to a depth of approximately 2 feet and import a Class 6 road base to ensure a suitable base for the new road.	\$379,300	
		\$379,300
000 - Asset Management Plan Fund; Engineering		
Spring and Main Street Improvements: Spring Street has a carry forward budget of \$154,960. The project completed design and was placed out to bid. The City received one bid that was \$411,828. Staff determined that this bid was too high and that placing the project out to bid in the spring would benefit the City. The City has received a bid that is \$283,608.95 and would like to proceed at this cost. The additional budget that would be required for the project would be \$114,000. The purpose of the project is to provide adequate pedestrian safety infrastructure at Main Street and Spring Street that will allow a better interaction between pedestrians and vehicles. In this past this intersection has been dangerous resulting in severe injuries to pedestrians. The project also includes new EV charging stations on Spring Street.	\$114,000	
		\$114,000
141 - Transportation Fund		
SHIFT - all aspects of the project have been closed as of April 1, 2019. 2019 SHIFT operational project budget authority was \$2,555,980. This budget is revised down to \$76,000, this funds the project analysis and closure. Background: The original budget of \$2,555,990 was funded: \$900,000 was funded from the Parking Fund, \$766,800 was funded from the General Fund and the balance of \$889,100 was funded from the Transportation Fund cash reserves.	(\$2,479,980)	
		(\$2,479,980)
421 - Water Fund		
51115 Utilities - Infrastructure Upgrade at Rio Grande and Mill Streets (Water Fund) with \$175K transfer from the Electric Utility Fund	\$777,690	
		\$777,690
431 - Electric Fund		
Formal appropriation of refinancing CCEC bonds in 2019. This funds paying off the debt principal of \$2,150,000, about \$22,000 in interest and \$38,000 in issuance costs. This also adds funding to align the annual debt service payment with the shorter repayment schedule, reduced from 2035 to 2025. There is an overall savings in interest of about \$450,000.	\$2,324,250	
		\$2,324,250
Total Previously Approved Requests		\$34,665,520

Department / Description	Amount
Accounting Actions	
Net Zero Impact: 100% reimbursed by CIRSA. This is the accounting action required to appropriate the reimbursement check from CIRSA, to repair the damage to the Chapel trail bridge.	
100 - Parks and Open Space Fund	\$165,000
Net Zero Impact: This is the accounting action required to reduce authority in the General Fund and increase authority in the Parking fund to pay for Parking's portion of the lease and operating costs in the Mill Building. Background: Parking Ops is scheduled to move from the existing Rio Grande Building to the Mill Building in 2019. The space that Parking is moving into is currently budgeted in the General Fund, Engineering department. This ops authority will be reduced and the ops budget in the Parking fund will be increased fund May through December 2019 lease and operational expenses, estimated at \$81,300. The full year of ops will be worked into the 2020 ops budget, estimated at \$124,600.	
001 - General Fund - Engineering (327)	(\$81,300)
451 - Parking Fund	\$81,300
Net Zero Impact: This is the accounting action required to transfer authority in the General Fund Red Brick facility ops budget and to authority in the Asset Management fund in the Red Brick Arts Boiler project 51110. Background: The project was originally estimated at \$104,500 being completed with internal staff, \$95,000 for the project and \$9,500 for staff time. The new estimate / bid is \$100,000.	
001 - General Fund - Red Brick Center for the Arts (552)	(\$5,000)
000 - Asset Management Fund	\$5,000
Net Zero Impact: This is the accounting action required to transfer departmental savings authority in the General Fund and the Parks and Open Space Fund to the Asset Management fund for improvemnts to the Tennis Storage Shed Expansion project.	
001 - General Fund - Recreation (542)	(\$11,000)
100 - Parks and Open Space Fund	(\$11,000)
000 - Asset Management Fund	\$22,000
Net Zero Impact: This is the accounting action required to transfer authority in the Transportation Fund capital project budget and to authority in the Asset Management fund so the work at the Spring Street Intersection can be managed and reported from one project in 2019. Background: The Spring Stree Intersection Improvements Project and Funding was approved by Council in March 2019.	
141 - Transportation Fund	(\$10,100)
000 - Asset Management Fund	\$10,100

Department / Description	Amount
<p>Net Zero Impact: This is the accounting action required to transfer existing budget authority from the General Fund central savings to Employee Housing Fund. BACKGROUND for City Owned Properties - HOA Dues: Asset is requesting additional funding to cover the relatively newly incurred HOA fees of the properties that have been acquired by the 505 fund over the last 3 years. These additional housing units added to the inventory and are used for interim and long term housing. The additional HOA expense had not been funded when the units were acquired. The expense has been covered from existing operations, negatively impacting funding required for normal operations and maintenance of City owned units. In 2019, this request will be funded from existing authority in central savings. The ongoing nature of this expense will be addressed in the 2020</p>	
505 - Employee Housing Fund	\$24,300
001 - General Fund (central savings)	(\$24,300)
Transfers Out and Double Counted Funding "Transfers"	
<u>2019 Project Funding Transfers</u>	
Parking Fund - Reduced the Transfer to match the revised budget of the SHIFT	(\$900,000)
General Fund - Reduced the Transfer to match the revised budget of the SHIFT	(\$744,000)
Transportation Fund - Environmental Health SHIFT work no longer moving forward based on the change of the scope in the SHIFT scope; therefore, funding EH costs from Water and Electric Fund. Reduction to funding from the Transportation Fund	(\$33,000)
Transportation Fund - Environmental Health SHIFT work no longer moving forward based on the change of the scope in the SHIFT scope; therefore, funding EH costs from Water and Electric Fund. Reduction to funding from the Transportation Fund	\$13,000
Transportation Fund - Environmental Health SHIFT work no longer moving forward based on the change of the scope in the SHIFT scope; therefore, funding EH costs from Water and Electric Fund. Reduction to funding from the Transportation Fund	\$20,000
<p>51115 Utilities - Infrastructure Upgrade - total project is \$777,690 fully funded in the Water Utility Fund. \$601,970 is Water Utility Fund work and funded from the cash reserves in this fund. \$175,720 is Electric Fund work and is funded by the cash reserves in the Electric Fund. This is the accounting action required to create an interfund transfer from the Electric Fund to the Water Fund to move these reserves.</p>	
431 - Electric Utility Fund	\$175,720
001 - General Fund - moving central savings to a transfer line to send authority to 505 Employee Housing fund to pay for HOA dues in 2019.	\$24,300
001 - General Fund - moving departmental savings budget to a transfer line to send authority to 000 Asset Management Fund to pay for 50% of the tennis shed expansion project.	\$11,000
100 - Parks and Open Space Fund - moving departmental savings budget to a transfer line to send authority to 000 Asset Management Fund to pay for 50% of the tennis shed expansion project.	\$11,000
001 - General Fund - moving ops budget to a transfer line to send authority to 000 Asset Management Fund to pay for boiler work at the Red Brick facility in 2019.	\$5,000

Department / Description	Amount
141 - Transportation Fund - moving capital project budget to a transfer line to send authority to 000 Asset Management Fund to combine funding so the work at the Spring Street Intersection can be managed and reported from one project in 2019.	\$10,100
2019 Transfers - Subtotal	(\$1,406,880)
Transfer to Central Savings - Based on City of Aspen Financial Policies	
141 - Transportation Fund	\$1,400
152 - Kids First Fund	\$3,150
160 - Stormwater Fund	\$19,420
421 - Water Utility Fund	\$26,400
431 - Electric Utility Fund	\$6,830
471 - Golf Fund	\$750
510 - Information Technology Fund	\$6,400
Transfer to Central Savings - Subtotal	\$64,350
Transfers Out and Double Counted Funding (Transfers) - required appropriations not true costs	(\$1,342,530)
Total Technical Adjustment	(\$1,177,530)

MEMORANDUM

TO: Mayor Skadron and City Council

FROM: Mike Kraemer, Senior Planner

THRU: Jessica Garrow, Community Development Director

MEETING DATE: May 13th, 2019

RE: 411 E. Hyman Avenue, Extension of Vested Rights –
Resolution No. 54 , Series 2019 – Public Hearing

APPLICANT/OWNER:

411 East Hyman Avenue, LLC

REPRESENTATIVE:

Chris Bendon, BendonAdams LLC

LOCATION:

411 E. Hyman Ave. PID#: 273718216005

CURRENT ZONING & USE

Located in the Commercial Core (CC) zone district. The property is developed with a mixed-use commercial/residential building constructed in the 1960's. The existing building is approximately 1,560 square feet and contains 1st floor commercial net leasable space and a 2nd floor free-market residence.

PROPOSED LAND USE:

The approved redevelopment project includes 1,151 square foot 1 story commercial building. Vested development rights for the property expire on October 27th, 2019. The Applicant requests a 24 month extension of vested rights for land use approvals associated with redevelopment of the property.

STAFF RECOMMENDATION:

Due to a noticing issue, Staff recommends a continuance to June 24, 2019.

Figure 1. 411 E. Hyman Avenue, looking south



REQUEST OF COUNCIL:

The Applicant is requesting the following land use approval:

- **Extension or Reinstatement of Vested Rights** to extend the vested rights, pursuant to Land Use Code Section 26.308.010 C., Extension or Reinstatement of Vested Rights. (City Council is the final review authority who may approve or deny the proposal).

An extension of vested rights hearing requires that public notice be provided in the following manner: (1) posting of the property, (2) mailing to neighbors, and (3) publication in the local newspaper. Unfortunately, the full notice requirements were not satisfied, and Staff and the Applicant recommend a continuance of the request to the **June 24, 2019** meeting date. Continuing the hearing will preserve the City's published notice in the newspaper and will provide the applicant enough time to complete the mailing and posting requirements.

PROPOSED MOTION:

"I move to continue Resolution No. 54, Series of 2019, a vested property rights extension request for 411 E. Hyman Avenue, to June 24, 2019."



TO: Mayor Skadron and City Council

FROM: Amy Simon, Historic Preservation Officer

THRU: Jessica Garrow, Community Development Director

RE: **119 Neale Avenue, Transferable Development Rights Ordinance #10, Series of 2019, Public Hearing**

DATE: May 13, 2019

SUMMARY:

The attached Ordinance creates Transferable Development Rights (TDRs) to be removed from 119 Neale Avenue, Lot 1, Benedict Cabin Subdivision, City and Townsite of Aspen, Colorado. This is a landmarked property owned by 119 Neale Avenue, LLC. The property was created through a Historic Landmark Lot Split, but does not contain a historic structure. The historic resource that qualified the site for a lot split sits to the south, on Lot 2.

Council previously reviewed an application for three TDRs at 119 Neale Avenue and denied the request in 2017. A subsequent lawsuit and settlement agreement has resulted in a commitment by Council to allow two TDRs. This Ordinance is necessary to formalize the removal of development rights from the property.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed Ordinance.

LAND USE REQUESTS AND REVIEW PROCEDURES:

The Applicant is requesting the following land use approval from City Council:

- **Transferable Development Rights-** (Chapter 26.535.070) for the creation of two TDRs. Council is the final decision-making authority.

STAFF RECOMMENDATION:

Criteria for the establishment of TDRs, and the staff evaluation are provided as Exhibit A. 119 Neale Avenue is eligible for the creation of TDRs to the extent that the existing development is smaller than the maximum allowable floor area. The maximum allowable floor area is 4,200 square feet and the existing development is 3,265 square feet, leaving 935 square feet of unused floor area to create TDRs.

The recent settlement between the property owner and the City states that two TDRs will be allowed. Each TDR equates to 250 square feet of floor area, which the property owner will be able to sell so that the floor area may be constructed on a non-historic property elsewhere in Aspen.

The settlement includes a provision that this property will not be eligible for additional TDRs in the future. Staff has included a condition in the Ordinance which restricts current and future owners of 119 Neale Avenue from submitting applications for additional TDRs.

Staff recommends adoption of the attached Ordinance.

RECOMMENDED MOTION (ALL MOTIONS ARE PROPOSED IN THE AFFIRMATIVE):

“I move to adopt Ordinance #10, Series of 2019, creating two TDRs at 119 Neale Avenue.”

ATTACHMENTS:

Ordinance #10, Series of 2019

Exhibit A - Transferable Development Rights Criteria/Staff Findings

ORDINANCE #10
(Series of 2019)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO
CREATING TWO TRANSFERABLE DEVELOPMENT RIGHTS AT THE PROPERTY
LOCATED AT 119 NEALE AVENUE, LOT 1, BENEDICT CABIN SUBDIVISION, CITY AND
TOWNSITE OF ASPEN, COLORADO

PARCEL ID: 2737-073-53-003

WHEREAS, 119 Neale Avenue, LLC, Jeffrey Shoaf, registered agent, requests approval to create and sever two Transferable Development Rights (TDRs) at 119 Neale Avenue (the “Property”); and

WHEREAS, creation of these TDRs is an obligation agreed to by City Council through their approval, via Resolution #41, Series of 2019, of a Settlement Agreement in the case of 119 Neale Avenue, LLC V. The City of Aspen, Pitkin County District Court, Case #2017CV30131; and

WHEREAS, Section 26.535.070 of the Aspen Municipal Code establishes the process for creation for Transferable Development Rights, which shall be approved if City Council determines sufficient evidence exists that the property meets the established review criteria; and

WHEREAS, Amy Simon, Historic Preservation Officer, in her staff report to City Council, performed an analysis of the application, found that the review standards were met, and recommended approval; and

WHEREAS, the City Council finds that the proposal meets or exceeds all applicable development standards and that the approval of the development proposal is consistent with the goals and elements of the Aspen Area Community Plan; and,

WHEREAS, the City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare.

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

Section 1: Transferable Development Rights

Pursuant to the findings set forth above, the City Council does hereby authorize the grant of two (2) Transferable Development Rights from 119 Neale Avenue, Lot 1, Benedict Cabin Subdivision, City and Townsite of Aspen, Colorado which TDRs shall be deducted from the 4,200 square feet of total allowable floor area for the Property, with the following conditions:

1. Upon satisfaction of all requirements, the city and the applicant shall establish a date on which the respective Historic TDR Certificates shall be validated and issued by the City and a deed restriction on the property shall be accepted by the City and filed with the Pitkin County Clerk and Recorder. The property owner may decide when and if, as warranted by the TDR market, the development rights will be converted into certificates and sold.
2. On the mutually agreed upon date, the Mayor of the City of Aspen shall execute and deliver the applicable number of Historic TDR Certificates to the property owner and the property owner shall execute and deliver a deed restriction lessening the available development right of the Sending Site, 119 Neale Avenue, Lot 1, Benedict Cabin Subdivision, City and Townsite of Aspen, Colorado, by 250 square feet per TDR together with the appropriate fee for recording the deed restriction with the Pitkin County Clerk and Recorder's Office.
3. Per the Settlement Agreement in the case of 119 Neale Avenue, LLC V. The City of Aspen, Pitkin County District Court, Case #2017CV30131, current and future owners of 119 Neale Avenue are prohibited from submitting applications for additional TDRs for the Property.
4. This Ordinance shall be recorded with the Pitkin County Clerk and Recorder, shall run with the land, and shall be binding upon 119 Neal Avenue LLC and Jeffrey Shoaf as registered agent, their successors and assigns.

Section 2: Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 3: Existing Litigation

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

Section 4: Vested Rights

The development approvals granted herein shall constitute a site-specific development plan vested for a period of three (3) years from the date of issuance of a development order. However, any failure to abide by any of the terms and conditions attendant to this approval shall result in the forfeiture of said vested property rights. Unless otherwise exempted or extended, failure to properly record all plats and agreements required to be recorded, as specified herein, within 180 days of the effective date of the development order shall also result in the forfeiture of said vested property rights and shall render the development order void within the meaning of

Section 26.104.050 (Void permits). Zoning that is not part of the approved site-specific development plan shall not result in the creation of a vested property right.

No later than fourteen (14) days following final approval of all requisite reviews necessary to obtain a development order as set forth in this Ordinance, the City Clerk shall cause to be published in a newspaper of general circulation within the jurisdictional boundaries of the City of Aspen, a notice advising the general public of the approval of a site specific development plan and creation of a vested property right pursuant to this Title. Such notice shall be substantially in the following form:

Notice is hereby given to the general public of the approval of a site specific development plan, and the creation of a vested property right, valid for a period of three (3) years, pursuant to the Land Use Code of the City of Aspen and Title 24, Article 68, Colorado Revised Statutes, pertaining to the following described property: **119 Neale Avenue.**

Nothing in this approval shall exempt the development order from subsequent reviews and approvals required by this approval of the general rules, regulations and ordinances or the City of Aspen provided that such reviews and approvals are not inconsistent with this approval.

The approval granted hereby shall be subject to all rights of referendum and judicial review; the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication of the notice of final development approval as required under Section 26.304.070(A). The rights of referendum shall be limited as set forth in the Colorado Constitution and the Aspen Home Rule Charter.

Section 5: Public Hearing

A public hearing on the ordinance was held on the 13th day of May, 2019, in the City Council Chambers, Aspen City Hall, Aspen, Colorado, fifteen (15) days prior to which hearing a public notice of the same was published in a newspaper of general circulation within the City of Aspen.

INTRODUCED, READ AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 22nd day of April, 2019.

Steven Skadron, Mayor

ATTEST:

Linda Manning, City Clerk

FINALLY, adopted, passed and approved this __ day of _____, 2019.

Steven Skadron, Mayor

ATTEST:

Linda Manning, City Clerk

APPROVED AS TO FORM:

James R. True, City Attorney



EXHIBIT A TDR REVIEW CRITERIA

26.535.070. Review criteria for establishment of a historic transferable development right.

A historic TDR certificate may be established by the Mayor if the City Council, pursuant to adoption of an ordinance, finds all the following standards met:

A. The sending site is a historic landmark on which the development of a single-family or duplex residence is a permitted use, pursuant to Chapter 26.710, Zone Districts. Properties on which such development is a conditional use shall not be eligible.

Staff Finding: 119 Neale Avenue is a landmarked property. Single family and duplex uses are permitted in the zone district where 119 Neale Avenue is located. Staff finds this criterion is met.

B. It is demonstrated that the sending site has permitted unbuilt development rights, for either a single-family or duplex home, equaling or exceeding two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates requested.

Staff Finding: According to City Council Ordinance #2, Series of 2012, the subdivision approval that created this lot, 119 Neale Avenue is allowed a maximum floor area of 4,200 square feet. To the extent that the existing development represents less than that, the owner may apply to sever Transferable Development Rights in increments of 250 square feet of floor area.

The existing structure has been calculated to be 3,265 square feet, leaving 935 square feet of unused floor area, sufficient for the creation of two 250 square foot TDRs. Staff finds this criterion is met.

C. It is demonstrated that the establishment of TDR certificates will not create a nonconformity. In cases where a nonconformity already exists, the action shall not increase the specific nonconformity.

Staff Finding: No non-conformities will be created by the establishment of TDRs. Staff finds this criterion is met.

D. The analysis of unbuilt development right shall only include the actual built development, any approved development order, the allowable development right prescribed by zoning for a single-family or duplex residence, and shall not include the potential of the sending site to gain floor area bonuses, exemptions or similar potential development incentives.

Staff Finding: The analysis only includes development that is by right. Staff finds this criterion is met.

E. Any development order to develop floor area, beyond that remaining legally connected to the property after establishment of TDR Certificates, shall be considered null and void.

Staff Finding: No such development order exists. Staff finds this criterion is not applicable.

F. The proposed deed restriction permanently restricts the maximum development of the property (the sending site) to an allowable floor area not exceeding the allowance for a single-family or duplex residence minus two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates established. For properties with multiple or unlimited floor areas for certain types of allowed uses, the maximum development of the property, independent of the established property use, shall be the floor area of a single-family or duplex residence (whichever is permitted) minus two hundred fifty (250) square feet of floor area multiplies by the number of historic TDR certificates established.

The deed restriction shall not stipulate an absolute floor area, but shall stipulate a square footage reduction from the allowable floor area for a single-family or duplex residence, as my be amended from time to time. The sending site shall remain eligible for certain floor area incentives and/or exemptions as may be authorized by the City Land Use Code, as may be amended from time to time. The form of the deed restriction shall be acceptable to the City Attorney.

Staff Finding: The deed restriction will follow the form approved by the City Attorney. Staff finds this criterion is met.

G. A real estate closing has been scheduled at which, upon satisfaction of all relevant requirements, the City shall execute and deliver the applicable number of historic TDR certificates to the sending site property owner and that property owner shall execute and deliver a deed restriction lessening the available development right of the subject property together with the appropriate fee for recording the deed restriction with the County Clerk and Recorder's office.

Staff Finding: A closing will be scheduled at the conclusion of the review. Staff finds this criterion is met.

H. It shall be the responsibility of the sending site property owner to provide building plans and a zoning analysis of the sending site to the satisfaction of the Community Development Director. Certain review fees may be required for the confirmation of built floor area. (Ord. 54-2003, §§ 4, 5)

Staff Finding: The applicant has provided a floor area analysis. Staff finds this criterion is met.

I. The sale, assignment, conveyance or other transfer or change in ownership of transferable development rights certificates shall be recorded in the real estate records of the Pitkin County Clerk and Recorder and must be reported by the grantor to the City of Aspen Community Development Department within five (5) days of such transfer. The report of such transfer shall disclose the certificate number, the grantor, the grantee and the total value of the consideration paid for the certificate. Failure to timely or accurately report such transfer shall not render the transferable development right certificate void.

Staff Finding: The applicant is obligated to report the sale to the City as described above. This is included as a condition of approval in the Ordinance.



MEMORANDUM

TO: Mayor Skadron and City Council

FROM: Amy Simon, Historic Preservation Officer

THRU: Jessica Garrow, Community Development Director

RE: **Historic Preservation Benefits Code Amendments
Ordinance #6, Series of 2019, Public Hearing continued from April 8, 2019**

DATE: May 13, 2019

SUMMARY:

The attached Ordinance amends sections of the City of Aspen Land Use Code addressing Historic Preservation, Growth Management Quota System, Transferable Development Rights, and Zone Districts. The objective of the proposed code amendments is to improve the historic preservation benefits, in place since 1987, to align with current policies reflected in the Historic Preservation Design Guidelines, and with philosophies of the Historic Preservation Commission, City Council and the community developed after three decades of experience in the implementation of the benefits.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed Ordinance.

LAND USE REQUESTS AND REVIEW PROCEDURES:

This meeting is to review potential changes to the City's Land Use Code. Pursuant to Land Use Code Section 26.310, City Council is the final review authority for all code amendments.

All code amendments are subject to a three-step process. This is the third step in the process. A policy resolution was approved by Council on September 17, 2018:

1. Public Outreach
2. Policy Resolution by City Council indicating if an amendment should be pursued
3. **Public Hearings on Ordinance outlining specific code amendments.**

UPDATES SINCE APRIL 8TH:

In response to Council direction provided on April 8th, staff has removed all affordable housing mitigation waivers for residential and commercial development on landmark sites. Staff has also

developed a second alternative for how the maximum floor area bonus that may be awarded by HPC could be determined by lot size.

Following a citizen suggestion, staff has written new language regarding demolition of upper floors interior to residential landmarks and has reworded proposed limits on duplexes attached above grade.

Exhibit A, the redlined code language, is written to show staff's original proposal on these topics and a second option. The Ordinance is written to include only staff's recommended option. Regarding floor area, due to the complexity of a true sliding scale, staff recommends the simpler version originally introduced at First Reading (250 square feet for lots up to 5,999 square feet in size, 375 square feet for lots up to 8,999 square feet in size, and 500 square feet of floor area bonus for lots over 9,000 square feet.) On the subject of interior demolition, while staff supports the citizen suggestion of allowing interior demolition of landmarks to proceed if it results in the sterilization of the removed floor area, we are concerned that the tracking of floor area and the need to record a deed restriction, will become problematic.

BACKGROUND:

Aspen has a rich history of historic preservation, with the first preservation ordinance adopted in 1972. Shortly thereafter, the Historic Preservation Commission (HPC) was created and two historic districts - the Commercial Core and Main Street - were established. With the guidance of HPC and Staff, Council developed the "City of Aspen Inventory of Historic Landmark Sites and Structures" listing significant historic resources that meet the criteria for historic designation and protection. Today, the Inventory contains 300 properties from both Victorian and Modern eras. All of these properties are required to go through a more rigorous and time intensive review than similar non-historic properties. Based on the adopted Historic Preservation Design Guidelines, HPC and City preservation staff are given the powers and duties to review and approve, approve with conditions, or to disapprove work on properties listed in the Inventory. HPC and Council can grant certain benefits for listed resources as an incentive for maintaining, preserving, and enhancing the historic property. The intent for these benefits is to encourage best historic preservation practices.

Most of the historic preservation benefits have been in place since a major expansion of the preservation program occurred in 1987. Few amendments have been made since that time. The Historic Landmark Lot Split and Transferrable Development Rights are more recent additions that were creative approaches to reducing the pressure to add on to a historic structure.

Staff believes that benefits for historic preservation have been critical to transforming the view of historic designation from a burden, as it was seen in the 80s. The fact that private property owners have remained interested in revitalizing historic sites over the last three decades since benefits were adopted is a credit to the community. More than 100 outstanding historic preservation projects have received awards from HPC in this time, and the City has received recognition from the State Historical Society and was recognized as Historic Preservation Commission of the Year by the National Alliance of Preservation Commissions for the pro-active and successful policies that have been implemented in Aspen. City staff has been invited to speak about Aspen's historic preservation benefits at State and National conferences, where the program is viewed as a model for others to follow.

This said, staff and HPC acknowledge that not all historic preservation projects have successfully balanced development and other community interests. In 2017, Council provided direction to examine the preservation benefits. There are a number of amendments that could potentially improve outcomes without unnecessarily threatening the positive aspects of the program. There are many remaining opportunities to restore buildings which may have been destructively altered prior to historic preservation policies being adopted. Of the approximately 2,000 parcels of land in Aspen, only 15% contain historic resources. The preservation program creates an opportunity for partnership between the City and this relatively small group of property owners to help maintain Aspen’s valued historic character.

ORDINANCE DETAILS:

Below is a complete list of preservation benefits as outlined in the Municipal Code. Those sections proposed for code amendments in the attached Ordinance are indicated in the table below with an “x.”

		Description	Amendments Proposed
A	Historic Landmark Lot Split	may allow subdivision of property	
B	Increased Density	may allow two detached single-family dwelling units or duplex on smaller lot	X
C	Variations	may allow development in side, rear and front setbacks, development that does not meet min. distance between buildings, up to 5% additional site coverage, less public amenity for commercial historic properties.	X
D	Parking reduction/fee waiver	reductions on sites unable to accommodate	X
E	Conditional Uses	depending on zone districts	
F	Floor Area Bonus	may grant up to 500 sq. ft. for projects that demonstrate exemplary HP practices	X
G	Growth Management Quota System Exemption	may be exempt or reduced	X
H	Waiver of impact fees	may be eligible for impact fee waiver	
I	Rehabilitation Loan Fund	zero interest loan for urgent repairs	
J	Conservation easement program	easement which may create tax benefits	
K	City-Owned Building Rehabilitation fund	maintenance of historic assets owned by the City accommodated in Asset Management Plan	
L	Transferable Development Rights (TDR)	undeveloped floor area to be relocated to a different property within the city	X
M	Tax credit applications	20% state income tax credit	X

N	Community-initiated development	opportunity for public/private partnership	
O	Building Code flexibility	flexibility in options for Building Code compliance	
P	Contractor Training	required training for all preservation projects	
Q	Cultural Heritage Tourism	websites, tours and other outreach efforts undertaken when possible	
R	Preservation Honor Awards	held annually in May	
S	Historic Markers	occasionally provided by City	
T	Work Sessions	can be held by HPC for qualifying projects	

Following is a summary of the proposed amendments, by Chapter.

Historic Preservation, Chapter 26.415

Amendments to this chapter address density and floor area increases. The policy goal is to “raise the bar” and focus specifically on direct preservation of the historic resource and actions which are beyond standard expectations.

Proposed code amendments include:

- Disallowing or disincentivizing significant demolition of the interior of a historic resource for the purpose of building a larger addition.
- Disallowing a duplex addition to a historic landmark to be linked to the resource above grade except on landmark parcels which do not contain a landmark structure (for instance a vacant parcel created by a lot split).
- Amending the floor area bonus so it is a sliding scale related to lot size, and disallowing a double dip where a landmark on a small lot can receive extra floor area for developing a duplex, plus a full bonus.
- Updating the criteria for the floor area bonus, requiring more criteria to be met and creating criteria that clearly reward preferred outcomes and discourage inappropriate results.

Staff also proposes to amend this chapter so as to discontinue local review of state income tax credits for historic preservation. Cities can choose to review these applications on behalf of the State, or the applications can be forwarded directly to the State Historical Society. For a number of reasons, this tax credit is not heavily utilized in Aspen. In addition, review of these applications is problematic to the extent that they increase in-house workload and responsibility for implementing complex regulations created by this outside agency. The tax credit now requires a level of interior historic preservation not

included in Aspen's program. For all of these reasons, staff recommends returning the review for State Income Tax Credits to the State.

Growth Management Quota System, Chapter 26.470

Certain projects currently have fewer or different requirements in Growth Management because the property is historic. Historic homes have generally provided no affordable housing mitigation and there is reduced affordable housing mitigation for commercial development in a historic building than what is required in a non-historic building.

In past discussions, Council has highlighted affordable housing waivers as an important area for code changes. Based on Council direction, all affordable housing exemptions related to historic preservation projects have been removed from the Growth Management Chapter. Sections 26.470.090.A, C, and D, as well as Section 26.470.100.A, have been removed. These sections provided exemptions for the expansion of designated single-family and duplex development, exemptions for the change in use between residential and commercial uses in historic properties, and exemptions for expansions in commercial, lodge, and mixed-use development. With these changes, all development – regardless of it if it is designated or not – is treated the same within the Growth Management chapter. Council did not express support for a new benefit to replace the existing waiver, so no new benefits have been added.

The policy goal for amendments to this chapter is to balance the importance of the historic preservation and affordable housing programs

Transferable Development Rights, Chapter 26.535

City Council may approve the creation of TDRs, which allows undeveloped floor area to be severed from a historic property and sold and developed on a different non-historic property within the city. This has been a very effective preservation benefit, essentially sterilizing some historic properties from further development.

The policy goal for the amendments to this Chapter of the Municipal Code is to ensure the effectiveness and health of the market for TDRs by limiting them to actions which have direct benefit to historic resources, and taking a property's specific characteristics into account when establishing TDRs. The proposed amendments provide Council with discretion to approve TDRs on a case by case basis, with a recommendation from HPC.

Zone Districts, Chapter 26.710

Some of the benefits discussed above are referenced in the Zone Districts, therefore amendments to this chapter are necessary for consistency.

NEW BENEFITS

In previous meetings, HPC and stakeholders have proposed that this discussion of improvements to historic preservation benefits include options for new benefits. In particular, benefits that do not necessarily add more mass to a site are of interest, including speeding up the process for HPC projects through expedited permit review, or reducing the costs of the process with City fee waivers.

Based on Council feedback at First Reading, the proposed Ordinance does not include the option for expedited permit review or fee waivers.

The Ordinance includes two new benefits proposed by historic property owners. First, a potential floor area exemption is introduced related to light wells daylighting basement space under specific conditions. Also, regarding TDRs, an amendment is proposed to allow the recapture of floor area that was eliminated in a 2005 code amendment that discouraged development of new homes on Main Street.

PUBLIC OUTREACH

Since Council's request in December 2017 to examine the Historic Preservation Benefits, HPC has held three (3) policy discussions, Council held a worksession and attended site visits to several current preservation projects, an online community survey was conducted and staff hosted a stakeholder meeting with a number of homeowners, architects, planners and developers with first-hand experience with the historic preservation benefits. Council and HPC also discussed benefits in a joint meeting held in December 2018. The complete feedback received through the public outreach resulting from the community survey and stakeholder's meetings are provided in Exhibit D to this memo. During this public hearing process, staff has provided updates on the amendments being discussed in the Community Development Department e-newsletter.

In general, public feedback has been supportive of the preservation benefits with none recommended to be eliminated. On-going careful management of the program is encouraged. A strong message that came out of the stakeholder's meeting was don't break what isn't broken now.

STAFF RECOMMENDATION:

Staff recommends adoption of the attached Ordinance.

RECOMMENDED MOTION (ALL MOTIONS ARE PROPOSED IN THE AFFIRMATIVE):

"I move to adopt Ordinance #6, Series of 2019, amending code provisions related to the City's Historic Preservation Benefits."

ATTACHMENTS:

Ordinance #6, Series of 2019

Exhibit A - Staff Findings

Exhibit B - Redlines of Proposed Amendments

Exhibit C - Resolution #108, Series of 2018, Historic Preservation Benefits Policy Resolution

Exhibit D- Public Outreach

**ORDINANCE #6
SERIES OF 2019**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING THE CITY OF ASPEN
LAND USE CODE RELATED TO HISTORIC PRESERVATION BENEFITS**

WHEREAS, in accordance with Sections 26.208 and 26.310 of the City of Aspen Land Use Code, the City Council of the City of Aspen directed the Community Development Department to draft code amendments to amend the language regarding benefits available to historic properties; and,

WHEREAS, pursuant to Section 26.310, applications to amend the text of Title 26 of the Municipal Code shall begin with Public Outreach, a Policy Resolution reviewed and acted on by City Council, and then final action by City Council after reviewing and considering the recommendation from the Community Development; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted Public Outreach and received comments from the Historic Preservation Commission regarding the code amendment; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on September 17, 2018, the City Council approved Resolution #108, Series of 2018, by a five to zero vote (5-0) requesting a code amendment to amend historic preservation benefits provided in the City's Land Use Code; and,

WHEREAS, the Aspen City Council has reviewed the proposed code amendments and finds that the amendments meet or exceed all applicable standards pursuant to Chapter 26.310; and,

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare; and

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

Section 1: Code Amendment Objectives

The objectives of these code amendments are to:

- A. Ensure continued preservation of all historic resources.
- B. Ensure historic preservation projects appropriately balance development opportunities and community benefit.

Section 2: Amendments to Section 26.415.070.A

Aspen Land Use Code Section 26.415.070.A shall be rescinded and re-adopted as follows:

26.415.070. Development involving designated historic property or property within a historic district.

No building, structure or landscape shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or a property located within a Historic District until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review. An application for a building permit cannot be submitted without a development order.

A. Exempt development.

1. Selected activities are exempted from the development review procedures including paint color selection, exterior repainting or replastering similar to the existing finish or routine maintenance such as caulking, replacement of fasteners, repair of window glazing or other such minimally intrusive work.
2. Interior remodeling is exempt except that demolition which results in the removal of more than 50% of the floor area within the interior of a historic resource is prohibited. The intent of this provision is to disincentivize the underutilization of the historic resource in order to make a larger addition to it.
3. If there is any question if a work activity qualifies as exempt, the Community Development Director shall make the determination as to its eligibility.

[All other subsections shall remain unchanged.]

Section 3: Amendments to Section 26.415.110.

Aspen Land Use Code Section 26.415.110 shall be rescinded and re-adopted as follows:

26.415.110. Benefits.

The City is committed to providing support to property owners to assist their efforts to maintain, preserve and enhance their historic properties. Recognizing that these properties are valuable community assets is the basic premise underlying the provision of special procedures and programs for designated historic properties and districts.

Benefits to encourage good historic preservation practices by the owners of historic properties are an important aspect of Aspen's historic preservation program. Historic resources are a valuable community asset and their continued protection is the basic premise supporting the creation of an innovative package of preservation tools that are unlike any other in the country.

Aspen's preservation benefits are in response to tight historic preservation controls that have been legislated by the City since 1972. The Community Development Department and

Historic Preservation Commission (HPC) are dedicated to assisting property owners in renovating and maintaining their property.

Aspen is unique. Its historic resources and spirit of community have not been duplicated anywhere else in the world. It is this basic character that has helped make the City both economically vital and cherished by many.

Only designated properties may be eligible for the following benefits.

A. Historic landmark lot split. Properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may receive an exemption from the subdivision and growth management quota system, pursuant to Sections 26.480 and 26.470, allowing owners of designated historic properties to create a second unit in addition to the historic building on their lot through the subdivision of the property. Refer to specific zone district information in Chapter 26.710 for further information. All parcels created through a Historic Landmark lot split shall retain designation on the Aspen Inventory of Historic Sites and Structures.

B. Increased density. Two detached single-family dwelling units or a duplex may be allowed on a smaller sized lot than is required for a non-designated property. Refer to specific zone district information in Chapter 26.710 for further information. Where a duplex is proposed on a designated property which contains a historic resource, the common unpierced wall must occur below grade. Locating the common wall below grade shall only be permitted for designated properties.

C. Variations. Dimensional variations are allowed for projects involving designated properties to create development that is more consistent with the character of the historic property or district than what would be required by the underlying zoning's dimensional standards.

1. The HPC may grant variations of the Land Use Code for designated properties to allow:
 - a) Development in the side, rear and front setbacks;
 - b) Development that does not meet the minimum distance requirements between buildings;
 - c) Up to five percent (5%) additional site coverage;
 - d) Less public amenity than required for the on-site relocation of commercial historic properties.
2. In granting a variation, the HPC must make a finding that such a variation:
 - a) Is similar to the pattern, features and character of the historic property or district; and/or

- b) Enhances or mitigates an adverse impact to the historic significance or architectural character of the historic property, an adjoining designated historic property or historic district.

D. Parking. On-site parking reductions are permitted for designated historic properties unable to contain the number of parking spaces required by the underlying zoning due to the existence of a historic resource. In these circumstances, alternative mitigation in the form of cash-in-lieu, pursuant to Chapter 26.515, may be accepted by HPC for commercial development. HPC may waive cash-in-lieu for residential development.

In addition to the review criteria listed in Chapter 26.515, the parking reduction and waiver of payment-in-lieu fees may be approved upon a finding by the HPC that it will enhance or mitigate an adverse impact on the historic significance or architectural character of a designated historic property, an adjoining designated property or a historic district.

E. Conditional uses. A variety of conditional uses are allowed for designated historic properties. These uses are identified in Chapter 26.710.

F. Floor area bonus.

1. In selected circumstances, the HPC may grant up to five hundred (500) additional square feet of allowable floor area for projects involving designated historic properties. The potential bonus is determined by net lot area such that a 3,000-5,999 square foot lot is eligible for a maximum of a two hundred fifty (250) square foot floor area bonus, a 6,000-8,999 square foot lot is eligible for a maximum of a three hundred seventy five (375) square foot floor area bonus and a 9,000 square foot or larger lot is eligible for a maximum of a 500 square foot floor area bonus. Floor area bonuses are cumulative. More than one bonus may be approved up to the maximum amount allowed for the lot. If a property is subdivided, the maximum bonus will be based on the original lot size, though the bonus may be allocated amongst the newly created parcels to the extent permitted.

On any lot where a historic property is permitted a duplex density while a non-historic property is not, the increased allowable floor area that results from the density will be deducted from the maximum bonus that the property may receive.

To be considered for the bonus, it must be demonstrated that the project meets all of the following criteria:

- a) The historic building is the key element of the property, and the primary entry into the structure, and the addition is incorporated in a manner that maintains the visual integrity of the historic building; and
- b) If applicable, historically significant site and landscape features from the period of significance of the historic building are preserved; and

- c) The applicant is undertaking multiple significant restoration actions, including but not limited to, re-opening an enclosed porch, re-installing doors and windows in original openings that have been enclosed, removing paint or other non-original finishes, or removing elements which are covering original materials or features; and
 - d) The project retains a historic outbuilding, if one is present, as a free standing structure above grade; and
 - e) The applicant is electing a preservation outcome that is a high priority for HPC, including but not limited to, creating at least two detached structures on the site, limiting the amount of above grade square footage added directly to a historic resource to no more than twice the above grade square footage of the historic resource, limiting the height of an addition to a historic resource to the height of the resource or lower, or demolishing and replacing a significantly incompatible non-historic addition to a historic resource with an addition that meets current guidelines.
2. Granting of additional allowable floor area is not a matter of right but is contingent upon the sole discretion of the HPC and the Commission's assessments of the merits of the proposed project and its ability to demonstrate exemplary historic preservation practices.
 3. The decision to grant a floor area bonus for major development projects will occur as part of the approval of a Conceptual Development Plan, pursuant to Subsection 26.415.070.D.
 4. Floor area bonuses are only available for single-family, duplex or 100% affordable housing development. A property shall receive no more than 500 square feet total. The award of a bonus is project specific. At such time that more than 40% of an addition to a historic resource that was constructed as part of a project which previously received a floor area bonus is demolished, the bonus may be retained only if the proposed redevelopment is found to meet the requirements of this Section.
 5. Separate from the floor area bonus described above, on a lot that contains a historic resource, HPC may exempt wall exposed by a light well that is larger than the minimum required for egress from the calculation of subgrade floor area only if the light well is internalized such that it is entirely recessed behind the vertical plane established by the portion of the building façade(s) closest to any street(s), the light well is screened from view from the street by building walls or fences, and any addition that is made to the affected resource simultaneous or after the construction of the light well is entirely one story.

G. Exemption from growth management quota system requirements. Certain types of development on designated historic properties are exempt from the growth management quota system and have reduced impact mitigation requirements. Refer to Chapter 26.470 for further information.

H. Waiver of impact fees. Designated historic properties may be eligible for waiver of Impact Fees. Refer to Chapter 26.610 for further information.

I. Rehabilitation loan fund. City Council may approve a zero interest loan in an amount up to twenty-five thousand dollars (\$25,000.00) for any property that is in violation of Section 26.415.100 of the Land Use Code, Demolition by Neglect, or to fund other rehabilitation work which is considered necessary for the preservation or restoration of a designated structure. To be eligible for this benefit, a property owner shall show evidence of financial need. These one-time loans shall be repaid at the time of transfer-of-title or by the end of ten (10) years, whichever comes first.

J. Conservation easement program. The City may accept a "Conservation Easement" from a property owner who wishes to forgo any of the allowed square footage on their property in exchange for a federal tax deduction. A deed restriction shall be filed on the site to show that future development is limited. The five hundred (500) square foot floor area bonus provided in Subsection 26.415.110 of the Land Use Code cannot be donated as a conservation easement.

K. City-owned building rehabilitation fund. The City shall give priority in the asset management plan to budgeting the funds necessary to adequately maintain, rehabilitate or restore City-owned designated properties.

L. Transferable Development Right (TDR). Pursuant to Chapter 26.535 of this Code, owners of properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may sever and convey, as a separate development right, undeveloped floor area to be developed on a different property within the City. Refer to Section 26.710, Zone Districts for further information on landing sites for TDRs.

M. Community-initiated development. The City shall consider opportunities to be involved in public-privately funded rehabilitation efforts, building expansion, or infill projects that demonstrate good historic preservation practices.

N. Building codes. The City's adopted Building Code provides for flexibility in its application to historic structures.

O. Contractor training. The Community Development Department shall provide periodic workshops for contractors on proper preservation techniques, using grants or other sources of funding.

P. Cultural heritage tourism. Through grants or other sources of funding, the City may facilitate collaborative partnerships among tourist industry sectors, historic property owners and cultural heritage attractions to create a marketing strategy and marketing products to attract visitors interested in the distinctive historic character of Aspen.

Q. Preservation honor awards. The Aspen Historic Preservation Commission shall present annual awards to recognize exemplary historic preservation efforts in the City.

R. Historic markers. Through grants or other sources of funding, the City may provide a historic marker of a standard design for any owner of a designated historic property who desires a marker to install on their building. The City may also develop a marker or signage program to recognize designated historic districts.

S. Work Sessions.

1. Projects requesting a Floor Area Bonus pursuant to Section 26.415.110(F), *Floor Area Bonus*, or projects of significant public interest may request a Work Session with HPC.
2. The purpose of the Work Session is to provide an applicant with initial feedback on the project. An application is required, and shall address the overall design intent, site plan, basic massing, and programming.
3. HPC may not take any formal action at the Work Session, and any feedback provided to the applicant is non-binding. All work sessions shall be noticed pursuant to the requirements for a public hearing in Section 26.304.060(E), *Public Noticing*, and public comment shall be taken.

Section 4: Amendments to Section 26.470.070.

Aspen Land Use Code Section 26.470.070.D shall be amended as follows:

“D. Remodeling or Relocation of historic structures. The remodeling or permanent or temporary relocation of a structure listed on the Aspen Inventory of Historic Landmark Sites and Structures, shall be exempt from growth management, provided that all necessary approvals are obtained, pursuant to Chapter 26.415, and no expansion occurs. Expansions shall be mitigated pursuant to this chapter.”

Aspen Land Use Code Section 26.470.070.E (Transferable development rights) shall be rescinded and all subsequent sections shall be renumbered. All references to the renumbered subsections within Chapter 26.470 shall be updated to reflect this renumbering.

Section 5: Amendments to Section 26.470.090

Aspen Land Use Code Sections 26.470.090.A (Single family and duplex development on historic properties), 26.470.090.D (Change in use of historic landmark sites and structures), and 26.470.090.E (Minor enlargement of an historic landmark for commercial, lodge, or mixed-use development), shall be rescinded and all sections within Section 26.470.090 shall be renumbered. All references to the renumbered subsections within Chapter 26.470 shall

be updated to reflect this renumbering.

Section 6: Amendments to Section 26.470.100

Aspen Land Use Code Section 26.470.100.A (Enlargement of an historic landmark for commercial, lodge, or mixed-use development) shall be rescinded and all subsequent sections shall be renumbered. All references to the renumbered subsections within Chapter 26.470 shall be updated to reflect this renumbering.

Section 7: Amendments to Section 26.535.070.

Aspen Land Use Code Section 26.535.070 shall be rescinded and re-adopted as follows:

26.535.070 Review criteria for establishment of a historic transferable development right

A historic TDR certificate may be established by the Mayor if the City Council, pursuant to adoption of an ordinance, finds all the following standards met.

- A. The sending site is a historic landmark on which the development of a single-family or duplex residence is a permitted use, pursuant to Chapter 26.710, Zone Districts. Properties on which such development is a conditional use shall not be eligible.
- B. It is demonstrated that the sending site has permitted unbuilt development rights, for either a single-family or duplex home, equaling or exceeding two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates requested.
- C. It is demonstrated that the establishment of TDR certificates will not create a nonconformity. In cases where a nonconformity already exists, the action shall not increase the specific nonconformity.
- D. The analysis of unbuilt development right shall only include the actual built development, any approved development order, the allowable development right prescribed by zoning for a single-family or duplex residence, and shall not include the potential of the sending site to gain floor area bonuses, exemptions or similar potential development incentives. Properties in the MU Zone District which do not currently contain a single-family home or duplex established prior to the adoption of Ordinance #7, Series of 2005, shall be permitted to base the calculation of TDRs on 100% of the allowable floor area on an equivalent-sized lot in the R-6 zone district. This is only for the purpose of creating TDRs and does not permit the on-site development of 100% of the allowable floor area on an equivalent-sized lot in the R-6 zone district. If the additional 20% of allowable floor area exceeds 500 square feet, the applicant may not request a floor area bonus from HPC at any time in the future.

- E. Any development order to develop floor area, beyond that remaining legally connected to the property after establishment of TDR Certificates, shall be considered null and void.
- F. The proposed deed restriction permanently restricts the maximum development of the property (the sending site) to an allowable floor area not exceeding the allowance for a single-family or duplex residence minus two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates established.

For properties with multiple or unlimited floor areas for certain types of allowed uses, the maximum development of the property, independent of the established property use, shall be the floor area of a single-family or duplex residence (whichever is permitted) minus two hundred fifty (250) square feet of floor area multiplies by the number of historic TDR certificates established.

The deed restriction shall not stipulate an absolute floor area, but shall stipulate a square footage reduction from the allowable floor area for a single-family or duplex residence, as may be amended from time to time. The sending site shall remain eligible for certain floor area incentives and/or exemptions as may be authorized by the City Land Use Code, as may be amended from time to time. The form of the deed restriction shall be acceptable to the City Attorney.

- G. A real estate closing has been scheduled at which, upon satisfaction of all relevant requirements, the City shall execute and deliver the applicable number of historic TDR certificates to the sending site property owner and that property owner shall execute and deliver a deed restriction lessening the available development right of the subject property together with the appropriate fee for recording the deed restriction with the County Clerk and Recorder's office.
- H. It shall be the responsibility of the sending site property owner to provide building plans and a zoning analysis of the sending site to the satisfaction of the Community Development Director. Certain review fees may be required for the confirmation of built floor area.
- I. The sale, assignment, conveyance or other transfer or change in ownership of transferable development rights certificates shall be recorded in the real estate records of the Pitkin County Clerk and Recorder and must be reported by the grantor to the City of Aspen Community Development Department within five (5) days of such transfer. The report of such transfer shall disclose the certificate number, the grantor, the grantee and the total value of the consideration paid for the certificate. Failure to timely or accurately report such transfer shall not render the transferable development right certificate void.
- J. TDR certificates may be issued at the pace preferred by the property owner.

- K. City Council may find that the creation of TDRs is not the best preservation solution for the affected historic resource and deny the application to create TDRs. HPC shall provide Council with a recommendation.

Section 8: Amendments to Section 26.710.040.D

Aspen Land Use Code Section 26.710.040.D shall be rescinded and re-adopted as follows:

26.710.040 Medium-Density Residential (R-6).

D. **Dimensional requirements.** The following dimensional requirements shall apply to all permitted and conditional uses in the Medium-Density Residential (R-6) Zone District:

11. Floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—6,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,240 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,600 square feet of floor area
6,000—9,000	3,240 square feet of floor area, plus 14 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,660 square feet of floor area	3,600 square feet of floor area, plus 16 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area
9,000—15,000	3,660 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,020 square feet of floor area	4,080 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,440 square feet of floor area
15,000—50,000	4,020 square feet of floor area, plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 5,770 square feet of floor area.	4,440 square feet of floor area, plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,190 square feet of floor area
50,000+	5,770 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	6,190 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area

*Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex.

- a Each City of Aspen Historic Transferable Development Right certificate extinguished, pursuant to Section 26.535, Transferable Development Rights, shall allow an additional two hundred and fifty (250) square feet of Floor Area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this Floor Area increase. Non-conforming uses and structures shall not be eligible for this Floor Area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:
- b Non-historic properties with a net lot area of 9,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.
- c Properties within the same subdivision or planned development as a sending site may be specified as eligible for up to two (2) floor area increases per residence pursuant to the subdivision or planned development approval. The properties to be specified as eligible for up to two (2) floor area increases per residence shall be located within the same subdivision or planned development so as to enhance preservation of the historic resource, considering a recommendation from the Historic Preservation Commission, shall not be located adjacent to the sending site and shall be described and depicted in the subdivision or planned development approvals granted by City Council. The total number of floor area increases permitted within the subdivision or planned development shall not exceed an aggregate total of one (1) per non-historic residence within the entire subdivision or planned development.

[All other subsections shall remain unchanged.]

Section 9: Amendments to Section 26.710.050.D

Aspen Land Use Code Section 26.710.050.D shall be rescinded and re-adopted as follows:

26.710.050 Moderate-Density Residential (R-15).

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15) Zone District.

- 10. External floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area.
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area.

Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex.

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

- a. Non-historic properties with a net lot area of 15,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

[All other subsections shall remain unchanged.]

Section 10: Amendments to Section 26.710.060.D

Aspen Land Use Code Section 26.710.060.D shall be rescinded and re-adopted as follows:

26.710.060 Moderate-Density Residential (R-15A).

D. **Dimensional requirements.** The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15A) Zone District:

10. Floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area.

Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex.

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and

structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

- a. Non-historic properties with a net lot area of 15,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

[All other subsections shall remain unchanged.]

Section 11: Scrivener's Errors.

Any scrivener's errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 12: Effect Upon Existing Litigation.

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 13: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 14: Effective Date.

In accordance with Section 4.9 of the City of Aspen Home Rule Charter, this ordinance shall become effective thirty (30) days following final passage.

Section 15: Public Hearing.

A public hearing on this ordinance was held on the 8th day of April, 2019 at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same was published in a newspaper of general circulation within the City of Aspen. Council continued the hearing to the 13th day of May, 2019, for further discussion and adoption of this ordinance.

INTRODUCED, READ AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 11th day of March, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

FINALLY, adopted, passed and approved _____, 2019.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

Approved as to form:

James R. True, City Attorney



Exhibit A
Amendments to the Land Use Code, Staff Findings

Review Criteria for Amendment to the Land Use Code			
An amendment to the Land Use Code must satisfy the review criteria of Section 26.310.050 of the Municipal Code			
Review Criteria, Section 26.310.050			
	MET	NOT MET	DOES NOT APPLY
A. Whether the proposed amendment is in conflict with any applicable portions of this title.	YES		
B. Whether the objectives of the proposed amendment achieves the policy, community goal, or objective cited as reasons for the code amendment or achieves other public policy objectives.	YES		
C. Whether the proposed amendment is compatible with the community character of the City and is in harmony with the public interest and the purpose and intent of this Title.	YES		

26.310.050. Amendments to the Land Use Code standards of review - Adoption

In reviewing a request to pursue an amendment to the text of this Title, per Section 26.310.020(B)(3), *Step Three - Public Hearing before the City Council*, the City Council shall consider:

- A. Whether the proposed amendment is in conflict with any applicable portions of this title.

Staff Findings:

Staff believes that the proposed code amendments are aligned with community interests. Multiple community plans, citizen task forces, public surveys, etc. have upheld historic preservation as a priority over the more than forty years that Aspen has maintained historic preservation regulations. As the program has matured, adjustments to review processes and decision-making guidelines have occurred several times. An update to the historic preservation benefits in order to ensure the continued preservation of all historic resources and to ensure historic preservation projects appropriately balance development opportunities and community goals is appropriate. *Staff finds this criterion to be met.*



- B. Whether the objectives of the proposed amendment achieves the policy, community goal, or objective cited as reasons for the code amendment or achieves other public policy objectives.

Staff Findings:

These amendments achieve the following Aspen Area Community Plan Policies:

The 2012 Aspen Area Community Plan states as a Policy “*Ensure that the historic preservation benefits package encourages owners of landmark properties to preserve structures to the highest possible degree of historic integrity while minimizing adverse impacts to the neighborhood.*” It also states “*Encourage the use of the City’s Historic Transferable Development Right program as a method of preserving the historic integrity of designated structures.*”

Stakeholder and general input has been sought in the crafting of the proposed amendments. The intent is to encourage best historic preservation practices. ***Staff finds this criterion to be met.***

- C. Whether the proposed amendment is compatible with the community character of the City and is in harmony with the public interest and the purpose and intent of this Title.

Staff Findings:

Historic Preservation is directly tied to ensuring compatibility with the community character through retaining structures that illustrate the City’s past and guiding new construction to be sympathetic with the surrounding context. Historic Preservation directly serves the public interest by protecting neighborhood scale, retaining meaningful examples of local architecture and history, and underscoring Aspen as a unique place to live and visit.

The proposed amendments are intended to improve preservation outcomes related to residential, commercial and civic properties throughout the community. Further, the proposed policies and code amendments ensure the ongoing effectiveness and viability of the City’s Land Use Code by ensuring its accuracy and the effectiveness of the regulations contained therein. ***Staff finds this criterion to be met.***

CHAPTER 26.415, HISTORIC PRESERVATION

26.415.070. Development involving designated historic property or property within a historic district.

No building, structure or landscape shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or a property located within a Historic District until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review. An application for a building permit cannot be submitted without a development order.

A. Exempt development.

1. Selected activities are exempted from the development review procedures including interior remodeling, paint color selection, exterior repainting or replastering similar to the existing finish or routine maintenance such as caulking, replacement of fasteners, repair of window glazing or other such minimally intrusive work.

2.

Option 1 (originally recommended by staff): Interior remodeling is exempt except that demolition which results in the removal of more than 50% of the floor area within the interior of a historic resource is prohibited. The intent of this provision is to disincentivize the underutilization of the historic resource in order to make a larger addition to it.

Option 2 (in response to a citizen suggestion): Interior remodeling is exempt except that demolition which results in the removal of more than 50% of the floor area within the interior of a historic resource will permanently extinguish that floor area such that the maximum floor area allowed on site will be reduced by an equivalent amount in perpetuity. The City will require the recording of a Deed Restriction making this reduction effective before a building permit to undertake the work will be issued. The intent of this provision is to disincentivize the underutilization of the historic resource in order to make a larger addition to it.

- ~~2.3.~~ If there is any question if a work activity qualifies as exempt, the Community Development Director shall make the determination as to its eligibility.

26.415.110. Benefits.

The City is committed to providing support to property owners to assist their efforts to maintain, preserve and enhance their historic properties. Recognizing that these properties are valuable community assets is the basic premise underlying the provision of special procedures and programs for designated historic properties and districts.

Benefits to encourage good historic preservation practices by the owners of historic properties are an important aspect of Aspen's historic preservation program. Historic resources are a valuable community asset and their continued protection is the basic premise supporting the creation of an innovative package of preservation tools that are unlike any other in the country.

Aspen's preservation benefits are in response to tight historic preservation controls that have been legislated by the City since 1972. The Community Development Department and Historic Preservation Commission (HPC) are dedicated to assisting property owners in renovating and maintaining their property.

Aspen is unique. Its historic resources and spirit of community have not been duplicated anywhere else in the world. It is this basic character that has helped make the City both economically vital and cherished by many.

Only designated properties may be eligible for the following benefits.

A. Historic landmark lot split. Properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may receive an exemption from the subdivision and growth management quota system, pursuant to Sections 26.480 and 26.470, allowing owners of designated historic properties to create a second unit in addition to the historic building on their lot through the subdivision of the property. Refer to specific zone district information in Chapter 26.710 for further information. All parcels created through a Historic Landmark lot split shall retain designation on the Aspen Inventory of Historic Sites and Structures.

B. Increased density. Two detached single-family dwelling units or a duplex may be allowed on a smaller sized lot than is required for a non-designated property. Refer to specific zone district information in Chapter 26.710 for further information. Where a duplex is proposed on a designated property which contains a historic resource, the common unpierced wall must occur below grade. Locating the common wall below grade shall only be permitted for designated properties.

C. ~~Variances.~~ Variations. Dimensional variations are allowed for projects involving designated properties to create development that is more consistent with the character of the historic property or district than what would be required by the underlying zoning's dimensional standards.

1. The HPC may grant variances variations of the Land Use Code for designated properties to allow:
 - a) Development in the side, rear and front setbacks;
 - b) Development that does not meet the minimum distance requirements between buildings;
 - c) Up to five percent (5%) additional site coverage;

- d) Less public amenity than required for the on-site relocation of commercial historic properties.
- 2. In granting a **variance variation**, the HPC must make a finding that such a **variance variation**:
 - a) Is similar to the pattern, features and character of the historic property or district; and/or
 - b) Enhances or mitigates an adverse impact to the historic significance or architectural character of the historic property, an adjoining designated historic property or historic district.

D. Parking. On-site Pparking reductions are permitted for designated historic properties ~~on-sites~~ unable to contain the number of parking spaces required by the underlying zoning due to the existence of a historic resource. In these circumstances, alternative mitigation in the form of cash-in-lieu, pursuant to Chapter 26.515, may be accepted by HPC for commercial development. HPC may waive cash-in-lieu for residential development. Commercial designated historic properties may receive waivers of payment-in-lieu fees for parking reductions.

In addition to the review criteria listed in Chapter 26.515, the parking reduction and waiver of payment-in-lieu fees may be approved upon a finding by the HPC that it will enhance or mitigate an adverse impact on the historic significance or architectural character of a designated historic property, an adjoining designated property or a historic district.

E. Conditional uses. A variety of conditional uses are allowed for designated historic properties. These uses are identified in Chapter 26.710.

F. Floor area bonus.

- 1. In selected circumstances, the HPC may grant up to five hundred (500) additional square feet of allowable floor area for projects involving designated historic properties.

Option 1 (originally recommended by staff): The potential bonus is determined by net lot area such that a 3,000-5,999 square foot lot is eligible for a maximum of a two hundred fifty (250) square foot floor area bonus, a 6,000-8,999 square foot lot is eligible for a maximum of a three hundred seventy five (375) square foot floor area bonus and a 9,000 square foot or larger lot is eligible for a maximum of a 500 square foot floor area bonus.

Option 2 (in response to Council input): The potential bonus is determined by net lot area such that for every square foot of net lot area up to 3,000 square feet, a bonus of 0.0833 square feet is possible. For every square foot of net lot area from 3,000 to 9,000 square feet, an additional bonus of 0.0416 square feet is possible. All

lots which are larger 9,000 square feet shall be limited to a maximum bonus of 500 square feet.

Floor area bonuses are cumulative. More than one bonus may be approved up to the maximum amount allowed for the lot. If a property is subdivided, the maximum bonus will be based on the original lot size, though the bonus may be allocated amongst the newly created parcels to the extent permitted.

On any lot where a historic property is permitted a duplex density while a non-historic property is not, the increased allowable floor area that results from the density will be deducted from the maximum bonus that the property may receive.

To be considered for the bonus, it must be demonstrated that the project meets all of the following criteria:

- ~~a) The design of the project meets all applicable design guidelines;~~
- b) a) The historic building is the key element of the property, and the primary entry into the structure, and the addition is incorporated in a manner that maintains the visual integrity of the historic building; and
 - b. If applicable, historically significant site and landscape features from the period of significance of the historic building are preserved; and
- c) c) The work restores the existing portion of the building to its historic appearance; The applicant is undertaking multiple significant restoration actions, including but not limited to, re-opening an enclosed porch, re-installing doors and windows in original openings that have been enclosed, removing paint or other non-original finishes, or removing elements which are covering original materials or features; and
- ~~d) The new construction is reflective of the proportional patterns found in the historic building's form, materials or openings;~~
- ~~e) The construction materials are of the highest quality;~~
- ~~f) An appropriate transition defines the old and new portions of the building;~~
- g) d). The project retains a historic outbuilding, if one is present, as a free standing structure above grade; and/or
- ~~h) Notable historic site and landscape features are retained.~~
 - e) The applicant is electing a preservation outcome that is a high priority for HPC, including but not limited to, creating at least two detached structures on the site, limiting the amount of above grade square footage added directly to a historic resource to no more than twice the above grade square footage of the historic resource, limiting the height of an addition to a historic resource to the height of the resource or lower, or demolishing and replacing a significantly incompatible non-historic addition to a historic resource with an addition that meets current guidelines.

2. Granting of additional allowable floor area is not a matter of right but is contingent upon the sole discretion of the HPC and the Commission's assessments of the merits of the proposed project and its ability to demonstrate exemplary historic preservation practices. ~~Projects that demonstrate multiple elements described above will have a greater likelihood of being awarded additional floor area.~~
3. The decision to grant a floor area bonus for major development projects will occur as part of the approval of a Conceptual Development Plan, pursuant to Subsection 26.415.070.D. ~~The floor area bonus may also be approved as part of a Historic Landmark Lot Split Review.~~
4. Floor area bonuses are cumulative only available for single-family, duplex or 100% affordable housing development. A property shall receive no more than 500 square feet total. The award of a bonus is project specific. At such time that more than 40% of an addition to a historic resource that was constructed as part of a project which previously received a floor area bonus is demolished, the bonus may be retained only if the proposed redevelopment is found to meet the requirements of this Section.
5. Separate from the floor area bonus described above, on a lot that contains a historic resource, HPC may exempt wall exposed by a light well that is larger than the minimum required for egress from the calculation of subgrade floor area only if the light well is internalized such that it is entirely recessed behind the vertical plane established by the portion of the building façade(s) closest to any street(s), the light well is screened from view from the street by building walls or fences, and any addition that is made to the affected resource simultaneous or after the construction of the light well is entirely one story.

G. Exemption from growth management quota system requirements. Certain types of development on designated historic properties are exempt from the growth management quota system and have reduced impact mitigation requirements. Refer to Chapter 26.470 for further information.

H. Waiver of impact fees. Designated historic properties may be eligible for waiver of Impact Fees. Refer to Chapter 26.610 for further information.

I. Rehabilitation loan fund. City Council may approve a zero interest loan in an amount up to twenty-five thousand dollars (\$25,000.00) for any property that is in violation of Section 26.415.100 of the Land Use Code, Demolition by Neglect, or to fund other rehabilitation work which is considered necessary for the preservation or restoration of a designated structure. To be eligible for this benefit, a property owner shall show evidence of financial need. These one-time loans shall be repaid at the time of transfer-of-title or by the end of ten (10) years, whichever comes first.

J. Conservation easement program. The City may accept a "Conservation Easement" from a property owner who wishes to forgo any of the allowed square footage on their property in exchange for a federal tax deduction. A deed restriction shall be filed on the

site to show that future development is limited. The five hundred (500) square foot floor area bonus provided in Subsection 26.415.110 of the Land Use Code cannot be donated as a conservation easement.

K. City-owned building rehabilitation fund. The City shall give priority in the asset management plan to budgeting the funds necessary to adequately maintain, rehabilitate or restore City-owned designated properties.

L. Transferable Development Right (TDR). Pursuant to Chapter 26.535 of this Code, owners of properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may sever and convey, as a separate development right, undeveloped floor area to be developed on a different property within the City. Refer to Section 26.710, Zone Districts for further information on landing sites for TDRs.

~~**M. Tax credit applications.** Community Development staff shall assist property owners in participating in State and Federal Rehabilitation Tax Credit programs by helping with the preparation of application materials, undertaking the necessary reviews to assist in obtaining certification. A twenty percent (20%) state rehabilitation income tax credit may be available for locally designated properties and may be combined with a twenty percent (20%) Federal Income Tax Credit which may be available for income producing properties listed on the National Register of Historic Places.~~

N.M. Community-initiated development. The City shall consider opportunities to be involved in public-privately funded rehabilitation efforts, building expansion, or infill projects that demonstrate good historic preservation practices.

~~**O.N. Building codes.** The City's adopted Building Code provides for flexibility in its application to historic structures. In addition, building permits for single family and duplex projects on a landmarked property which are granted Major Development approval by HPC are eligible to receive expedited permit processing for the master permit through the first and second rounds of review. (Note: This is only proposed if the affordable housing waiver for single family and duplex development is eliminated and not replaced with a fee waiver, or if Council wishes to add a new benefit.)~~

P.O. Contractor training. The Community Development Department shall provide periodic workshops for contractors on proper preservation techniques, using grants or other sources of funding.

Q.P. Cultural heritage tourism. Through grants or other sources of funding, the City may facilitate collaborative partnerships among tourist industry sectors, historic property owners and cultural heritage attractions to create a marketing strategy and marketing products to attract visitors interested in the distinctive historic character of Aspen.

R.Q. Preservation honor awards. The Aspen Historic Preservation Commission shall present annual awards to recognize exemplary historic preservation efforts in the City.

S.R. Historic markers. Through grants or other sources of funding, the City may provide a historic marker of a standard design for any owner of a designated historic property who desires a marker to install on their building. The City may also develop a marker or signage program to recognize designated historic districts.

T.S. Work Sessions.

1. Projects requesting a Floor Area Bonus pursuant to Section 26.415.110(F), *Floor Area Bonus*, or projects of significant public interest may request a Work Session with HPC.
2. The purpose of the Work Session is to provide an applicant with initial feedback on the project. An application is required, and shall address the overall design intent, site plan, basic massing, and programming.
3. HPC may not take any formal action at the Work Session, and any feedback provided to the applicant is non-binding. All work sessions shall be noticed pursuant to the requirements for a public hearing in Section 26.304.060(E), *Public Noticing*, and public comment shall be taken.

CHAPTER 26.470, GROWTH MANAGEMENT QUOTA SYSTEM

26.470.070 Exempt Development

D. Remodeling or Relocation of historic structures. The remodeling (~~consistent with subsection F, below~~) or permanent or temporary relocation of a structure listed on the Aspen Inventory of Historic Landmark Sites and Structures, shall be exempt from growth management, provided that all necessary approvals are obtained, pursuant to Chapter 26.415, ~~and no expansion occurs. Expansions shall be mitigated pursuant to this chapter.~~

~~**E. Transferable development rights.** The establishment and extinguishment of transferable development right certificates shall be exempt from growth management, provided that such certificates comply with Chapter 26.535, Transferable Development Rights.~~

26.470.090 Administrative applications.

The following types of development shall be approved, approved with conditions or denied by the Community Development Director, pursuant to Section 26.470.060, Procedures for Review, and the criteria described below. Except as noted, all administrative growth management approvals shall not be deducted from the annual development allotments. All approvals apply cumulatively.

~~A. Single-family and duplex development on historic landmark properties.~~ The development of one or multiple single-family residences or a duplex on a parcel of land designated as an historic landmark and which contains an historic resource shall be approved by the Community Development Director. This review applies to the rehabilitation of existing structures, reconstruction after demolition of existing structures, an expansion of Floor Area, and to the development of new structures on historic landmark properties. No affordable housing mitigation shall be required, provided that all necessary approvals are obtained, pursuant to Chapter 26.415, Historic Preservation, and provided that the parcel contains an historic resource.

Development of single-family or duplex structures on an historic landmark property that does not contain an historic resource (for example, a house on a lot which was subdivided from an historic landmark property) shall be subject to the provisions of Section 26.470.090.B, Single-Family and Duplex Residential Development or Expansion:

~~D. Change in use of historic landmark sites and structures.~~ The change of use between the development categories identified in Section 26.470.020, of a property, structure or portion of a structure designated as an historic landmark shall be approved, approved with conditions or denied by the Community Development Director if no more than one (1) free-market residence is created. No employee mitigation shall be required. If more than one (1) free-market residence is created, the additional units shall be reviewed pursuant to Paragraph 26.470.070.G. The change in amount of development and number of units shall not be added or deducted from the respective annual development allotments.

~~E. Minor enlargement of an historic landmark for commercial, lodge or mixed-use development.~~ The enlargement of a property, structure or portion of a structure designated as an historic landmark for commercial, lodge or mixed-use development shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria. The additional development of uses identified in Section 26.470.020 shall not be deducted from the respective annual development allotments:

- ~~1) If the development increases either floor area or net leasable space/lodge units, but not both, then no employee mitigation shall be required.~~
- ~~2) If the development increases both floor area and net leasable space/lodge units, up to four (4) employees generated by the additional commercial/lodge shall not require the provision of affordable housing mitigation. This shall be cumulative. An expansion generating more than four (4) employees shall not qualify for this~~

~~administrative approval and shall be reviewed pursuant to Paragraph 26.470.100.A.~~

~~3) No more than one (1) free-market residence is created. This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 29, Series of 2016.~~

26.470.100 Planning and Zoning Commission applications

The following types of development shall be approved, approved with conditions or denied by the Planning and Zoning Commission, pursuant to Section 26.470.060, Procedures for review, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.080. Except as noted, the following types of growth management approvals shall be deducted from the annual development allotments. Approvals apply cumulatively.

~~**A. Enlargement of an historic landmark for commercial, lodge or mixed use development.** The enlargement of an historic landmark building for commercial, lodge or mixed use development shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:~~

~~1. Up to four (4) employees generated by the additional commercial/lodge development shall not require the provision of affordable housing. Thirty percent (30%) of the employee generation above four (4) and up to eight (8) employees shall be mitigated through the provision of affordable housing, affordable housing credits, or cash in lieu thereof. Sixty five percent (65%) of the employee generation above eight (8) employees shall be mitigated through the provision of affordable housing, affordable housing credits, or cash in lieu thereof.~~

~~For example: A project generating 15 employees shall require employee mitigation for a total of 5.75 employees, as follows:~~

First 4 employees	=	0 employee mitigation
Second 4 employees mitigated at 30%	=	1.2 employees
Remaining 7 employees mitigated at 65%	=	4.55 employees

~~Affordable housing shall be approved pursuant to Section 26.470.080.D, Affordable Housing Mitigation.~~

~~2. Up to one (1) free-market residence may be created pursuant to Paragraph 26.470.090.E, Minor enlargement of an historic landmark for commercial, lodge or mixed use development. This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 29, Series of 2015. Additional free-market units (beyond one [1])~~

~~shall be reviewed pursuant to Paragraph 26.470.100.C, New free-market residential units within a multi-family or mixed-use project.~~

CHAPTER 26.535, TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

26.535.070 Review criteria for establishment of a historic transferable development right

A historic TDR certificate may be established by the Mayor if the City Council, pursuant to adoption of an ordinance, finds all the following standards met.

- A. The sending site is a historic landmark ~~or property identified on the AspenModern Map,~~ on which the development of a single-family or duplex residence is a permitted use, pursuant to Chapter 26.710, Zone Districts. Properties on which such development is a conditional use shall not be eligible.
- B. It is demonstrated that the sending site has permitted unbuilt development rights, for either a single-family or duplex home, equaling or exceeding two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates requested.
- C. It is demonstrated that the establishment of TDR certificates will not create a nonconformity. In cases where a nonconformity already exists, the action shall not increase the specific nonconformity.
- D. The analysis of unbuilt development right shall only include the actual built development, any approved development order, the allowable development right prescribed by zoning for a single-family or duplex residence, and shall not include the potential of the sending site to gain floor area bonuses, exemptions or similar potential development incentives. Properties in the MU Zone District which do not currently contain a single-family home or duplex established prior to the adoption of Ordinance #7, Series of 2005, shall be permitted to base the calculation of TDRs on 100% of the allowable floor area on an equivalent-sized lot in the R-6 zone district. This is only for the purpose of creating TDRs and does not permit the on-site development of 100% of the allowable floor area on an equivalent-sized lot in the R-6 zone district. If the additional 20% of allowable floor area exceeds 500 square feet, the applicant may not request a floor area bonus from HPC at any time in the future.
- E. Any development order to develop floor area, beyond that remaining legally connected to the property after establishment of TDR Certificates, shall be considered null and void.
- F. The proposed deed restriction permanently restricts the maximum development of the property (the sending site) to an allowable floor area not exceeding the allowance for a

single-family or duplex residence minus two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates established.

For properties with multiple or unlimited floor areas for certain types of allowed uses, the maximum development of the property, independent of the established property use, shall be the floor area of a single-family or duplex residence (whichever is permitted) minus two hundred fifty (250) square feet of floor area multiplies by the number of historic TDR certificates established.

The deed restriction shall not stipulate an absolute floor area, but shall stipulate a square footage reduction from the allowable floor area for a single-family or duplex residence, as may be amended from time to time. The sending site shall remain eligible for certain floor area incentives and/or exemptions as may be authorized by the City Land Use Code, as may be amended from time to time. The form of the deed restriction shall be acceptable to the City Attorney.

- G. A real estate closing has been scheduled at which, upon satisfaction of all relevant requirements, the City shall execute and deliver the applicable number of historic TDR certificates to the sending site property owner and that property owner shall execute and deliver a deed restriction lessening the available development right of the subject property together with the appropriate fee for recording the deed restriction with the County Clerk and Recorder's office.
- H. It shall be the responsibility of the sending site property owner to provide building plans and a zoning analysis of the sending site to the satisfaction of the Community Development Director. Certain review fees may be required for the confirmation of built floor area.
- I. The sale, assignment, conveyance or other transfer or change in ownership of transferable development rights certificates shall be recorded in the real estate records of the Pitkin County Clerk and Recorder and must be reported by the grantor to the City of Aspen Community Development Department within five (5) days of such transfer. The report of such transfer shall disclose the certificate number, the grantor, the grantee and the total value of the consideration paid for the certificate. Failure to timely or accurately report such transfer shall not render the transferable development right certificate void.
- J. TDR certificates may be issued at the pace preferred by the property owner.
- K. City Council may find that the creation of TDRs is not the best preservation solution for the affected historic resource and deny the application to create TDRs. HPC shall provide Council with a recommendation.

CHAPTER 26.710, ZONE DISTRICTS

26.710.040 Medium-Density Residential (R-6).

D. **Dimensional requirements.** The following dimensional requirements shall apply to all permitted and conditional uses in the Medium-Density Residential (R-6) Zone District:

11. Floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—6,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,240 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,600 square feet of floor area
6,000—9,000	3,240 square feet of floor area, plus 14 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,660 square feet of floor area	3,600 square feet of floor area, plus 16 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area
9,000—15,000	3,660 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,020 square feet of floor area	4,080 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,440 square feet of floor area
15,000—50,000	4,020 square feet of floor area, plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 5,770 square feet of floor area.	4,440 square feet of floor area, plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,190 square feet of floor area
50,000+	5,770 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	6,190 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area

*Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex. ~~Total external floor area for multiple detached residential dwellings on a lot less than nine thousand (9,000) square feet listed on the inventory of historic landmark sites and structures shall not exceed the floor area allowed for one (1) detached residential dwelling.~~

- a. Each City of Aspen Historic Transferable Development Right certificate extinguished, pursuant to Section 26.535, Transferable Development Rights, shall allow an additional two hundred and fifty (250) square feet of Floor Area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this Floor Area increase. Non-conforming uses and structures shall not be eligible for this Floor Area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:
- b. Non-historic properties with a net lot area of 9,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.
- c. Properties within the same subdivision or planned development as a sending site may be specified as eligible for up to two (2) floor area increases per residence pursuant to the subdivision or planned development approval. The properties to be specified as eligible for up to two (2) floor area increases per residence shall be located within the same subdivision or planned development so as to enhance preservation of the historic resource, considering a recommendation from the Historic Preservation Commission, shall not be located adjacent to the sending site and shall be described and depicted in the subdivision or planned development approvals granted by City Council. The total number of floor area increases permitted within the subdivision or planned development shall not exceed an aggregate total of one (1) per non-historic residence within the entire subdivision or planned development.

26.710.50 Moderate-Density Residential (R-15).

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15) Zone District.

10. External floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area.
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area.

Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex. ~~Total external floor area for multiple detached residential dwellings on a lot less than twenty thousand (20,000) square feet listed on the inventory of historic landmark sites and structures shall not exceed the floor area allowed for one (1) detached residential dwelling.~~

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

- a. Non-historic properties with a net lot area of 15,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

26.710.60 Moderate-Density Residential (R-15A).

D. **Dimensional requirements.** The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15A) Zone District:

10. Floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area.

Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex. ~~Total external floor area for multiple detached residential dwellings on a lot less than twenty thousand (20,000) square feet listed on the inventory of historic landmark sites and structures shall not exceed the floor area allowed for one (1) detached residential dwelling.~~

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

- a. Non-historic properties with a net lot area of 15,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

**RESOLUTION #108
SERIES OF 2018**

**A RESOLUTION OF THE CITY OF ASPEN CITY COUNCIL ADOPTING
POLICIES IN SUPPORT OF AMENDMENTS TO THE LAND USE CODE**

WHEREAS, pursuant to Section 26.310.020(A), a Policy Resolution is required to initiate the process of amending the City of Aspen Land Use Code; and,

WHEREAS, pursuant to Section 26.310.020(A), the Community Development Department received direction from City Council to explore amendments to the City's historic preservation regulations; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted Public Outreach with members of the public, historic property owners, local architects, designers, and planners; and,

WHEREAS, the Community Development Director recommends Council consider changes to the Historic Preservation, Growth Management Quota System, Subdivision, Transportation and Parking Management, Transferable Development Rights, Impact Fees and Zone Districts sections of the Land Use Code; and,

WHEREAS, City Council has reviewed the proposed code amendment policy direction, and finds it meets the criteria outlined in Section 26.310.040; and,

WHEREAS, amending the Land Use Code as described below will ensure the ongoing effectiveness and viability of the regulations within the City of Aspen Land Use Code to achieve City Council's policy and regulatory goals; and,

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on September 17, 2018 the City Council approved Resolution #108, Series of 2018, by a 5 to ~~4~~ vote, requesting code amendments to the Land Use Code; and,

WHEREAS, this Resolution does not amend the Land Use Code, but provides direction to staff for amending the Land Use Code; and,

WHEREAS, the City Council finds that this Resolution furthers and is necessary for the promotion of public health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN AS FOLLOWS:

Section 1: Overall Code Amendment Objectives

The objectives of these code amendments are to:

- A. Ensure continued preservation of all historic resources.

- B. Ensure historic preservation projects appropriately balance development opportunities and community benefit.

Section 2: Historic Preservation Benefit Code Amendment Goals by Topic

The goals of the Historic Preservation Benefits amendments are to:

- A. Maintain the ability to create two detached units where currently allowed, while limiting the total amount of square footage that can be developed as a result of the additional unit.
- B. Strengthen the review criteria for the Floor Area Bonus, including
 1. Provide no bonus for lots that can achieve 500 square feet or more from the creation of two detached units or a duplex.
 2. Create a sliding scale of potential Floor Area Bonus based on lot size.
 3. Update criteria for a bonus and/or create a sliding scale of potential Floor Area Bonus based on the level of preservation achieved.
 4. Limit the ability for a Floor Area Bonus when significant interior space is removed in an effort to create a larger addition.
 5. Establish criteria that reward an owner for exceeding requirements for other community priorities, such as the creation of affordable housing.
- C. Return review of Historic Preservation State Income Tax Credit applications to the State of Colorado.

Section 3: Growth Management Code Amendment

The goals of the Growth Management amendments are to:

- A. Balance the importance of the historic preservation and affordable housing programs by ensuring that any affordable housing mitigation waivers or reductions for residential projects are directly related to the preservation of a historic resource.

Section 4: Transferable Development Rights Code Amendment

The goals of the TDR amendments are to:

1. Strengthen the criteria for the establishment of TDRs.
2. Limit creation of TDRs only to lots that contain a historic resource.

Section 5: Zone Districts Code Amendment

The goal of the Zone District code amendments is to:

1. Ensure the items listed in sections 2-4 are appropriately incorporated into the relevant zone districts.

Section 6: New Benefits

The goal of these amendments is to:

- A. Determine if other benefits may be beneficial and achievable, including expedited permit review, or permit review fee reductions.

Section 7:

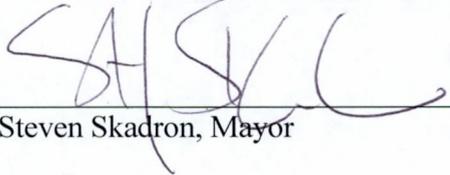
This resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions or ordinances

repealed or amended as herein provided, and the same shall be conducted and concluded under such prior resolutions or ordinances.

Section 8:

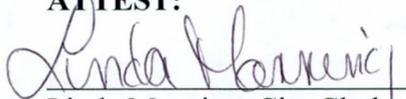
If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

FINALLY, adopted this 17 day of September, 2018.



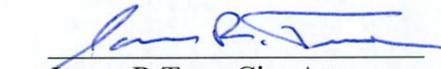
Steven Skadron, Mayor

ATTEST:



Linda Manning, City Clerk

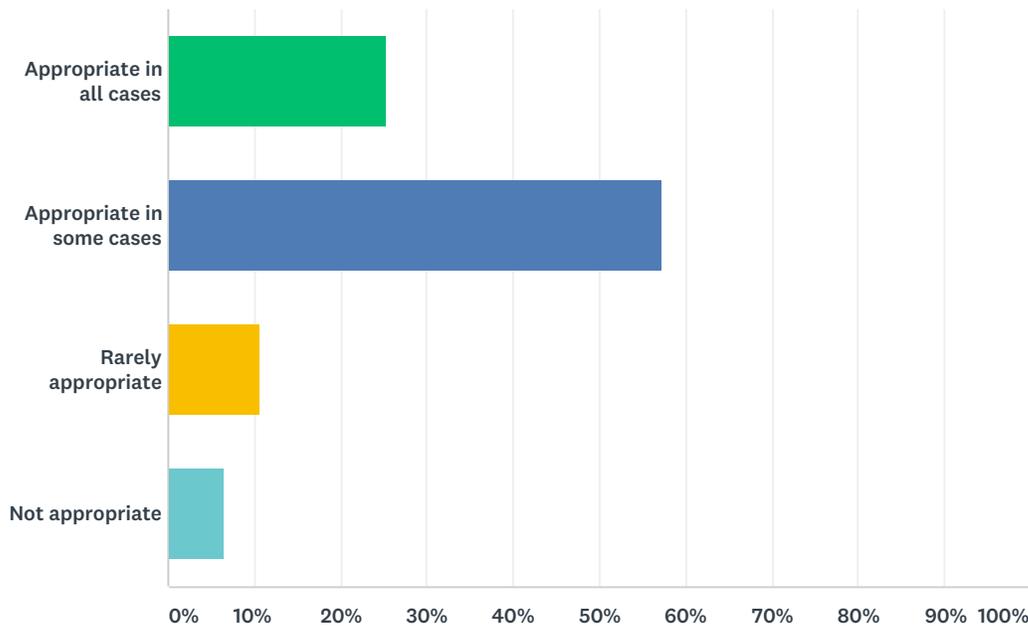
APPROVED AS TO FORM:



James R True, City Attorney

Q1 Transferable Development Rights (TDR): Square footage that could be added to a historic property can be severed, sold and built on a different, non-historic property within the city. The historic property owner captures the value of the square footage without making an addition to a historic building. My perception of TDRs is:

Answered: 122 Skipped: 1



ANSWER CHOICES	RESPONSES	
Appropriate in all cases	25.41%	31
Appropriate in some cases	57.38%	70
Rarely appropriate	10.66%	13
Not appropriate	6.56%	8
TOTAL		122

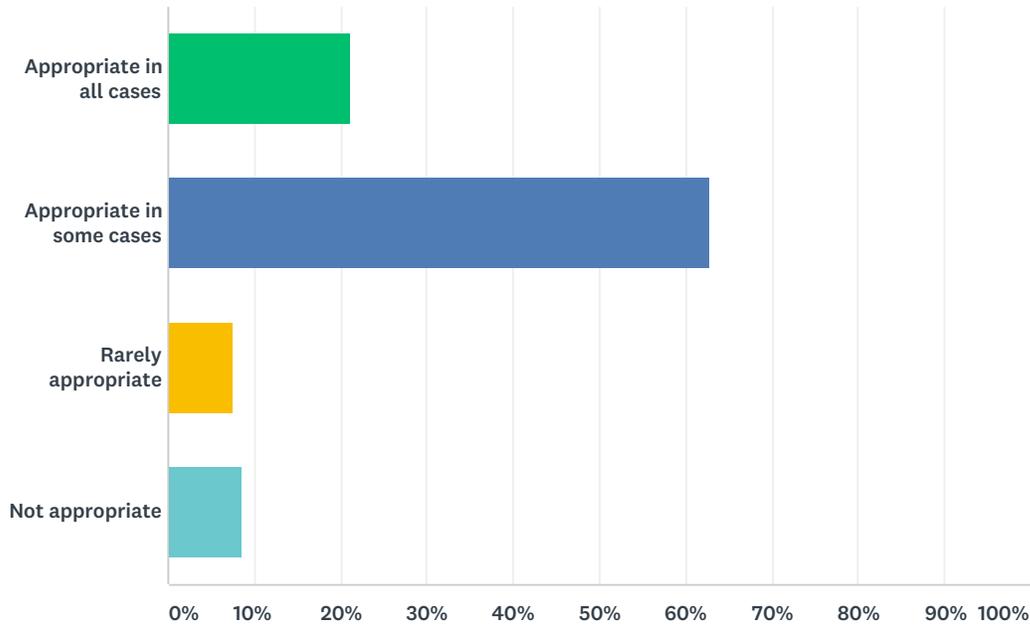
#	COMMENTS OR SUGGESTIONS FOR IMPROVEMENTS:	DATE
1	Additional development should occur where permitted by basic zoning rather than transfer additional impacts to other neighborhoods. As I recall, Historic TDR's are in part created by historic FAR bonuses, increasing impact.	4/9/2018 10:35 AM
2	In the case below, the lot size is disproportionate to the building. Allowing for a TDR would appropriate the site more cohesively. This also should not be a historic property as the building has very little aesthetic and architectural value.	4/5/2018 9:56 AM
3	I think the TDRs should be capped at 3..... this is a "make believe" market and it seems silly to allow that much to be removed from one site	4/4/2018 9:47 PM
4	make it a staff-level review. requiring City Council review is an unnecessary disincentive; the criteria are objective anyway	4/4/2018 4:23 PM
5	5 TDRs is too much to preserve 1,250 sq ft. in the case you list here. % TDRs has more than a million dollar value	4/4/2018 11:32 AM

Historic Preservation Benefits - Survey

6	I don't believe all development rights should be severed from a property. Some should remain to allow minor expansions in the future.	4/3/2018 7:34 PM
7	keep buildings as historically accurate as possible	4/3/2018 1:47 PM
8	TDR's are great, but as per usual, case by case evaluation better keeps to the mission of historic preservation. Unusual circumstances require attention is all.	4/3/2018 1:34 PM
9	This would be appropriate where the Owner of the historic property wishes to (1) first and foremost retain the historic nature of a listed historic property, and (2) not be financially harmed by its preservation. This is NOT a tool or trick to be used by a developer to gain square footage on another parcel.	4/3/2018 1:14 PM
10	I wish that there wasn't a square footage bonus at all... but having it on a non-historic building is better than having it on a historic building!!	4/3/2018 12:34 PM
11	TDR are an outdated incentive for historic preservation. Aspen's real estate is all based on maximizing developable sq footage. Secondf why should rneighbors of a receiving site bear the burden of a de facto upzoning that is the result of a speculative real estate development.	4/2/2018 6:18 PM
12	TDRs are not always the answer to appropriate historic preservation. Too many TDRs flood the market and impact the value of the incentive. There is a delicate balance that needs to be considered when granting TDRs.	4/2/2018 7:33 AM
13	Hard for the Board to determine which projects do and do not deserve the bonus; too subjective. In addition, the question does not let the reader know that the bonus is currently determined by the Board.	4/1/2018 7:38 PM
14	just a way to promote corruption	3/29/2018 8:34 PM
15	Appropriate when a building fits in with the Victorian Character of Aspen. Not appropriate when a building is preserved simply to be preserved and may not actually be worth preserving.	3/29/2018 3:23 PM
16	The ability to sever TDRs should be available to all properties. It will then be up to the property owner to decide if it is appropriate for his/her situation.	3/29/2018 2:10 PM
17	TDR's are too freely given and shift mass & scale to other properties. In the example below, the site and location can appropriately accommodate 1,250 SF in new development	3/29/2018 1:38 PM
18	We need appropriate easements and multigenerational homes	3/29/2018 12:59 PM
19	Don't allow additions.	3/29/2018 12:35 PM
20	It is very subjective whether the site is better as-is, or added to. There are many excellent examples of historic buildings with interesting modern additions.	3/29/2018 12:09 PM
21	It should only land on certain (size limited) properties	3/27/2018 11:47 AM
22	Historic property must not look out of place but more a base where newer building appearances are based on. A segue to modern building appearances etc	3/27/2018 10:28 AM
23	I think the TDR program has been administered in a haphazard way based on political whims not on the guidelines of the program. There needs to be consistency and fairness with this program.	3/27/2018 10:21 AM

Q2 Historic Landmark Lot Split/Density Increase: Instead of attaching a large addition to a historic building, a property owner may divide their allowed square footage into two buildings; the historic structure and a new structure alongside it. The historic property owner achieves his/her development rights, while the development is comprised of smaller structures which are likely more in scale with the neighborhood. My perception of the historic landmark lot split/increase density is:

Answered: 118 Skipped: 5



ANSWER CHOICES	RESPONSES
Appropriate in all cases	21.19% 25
Appropriate in some cases	62.71% 74
Rarely appropriate	7.63% 9
Not appropriate	8.47% 10
TOTAL	118

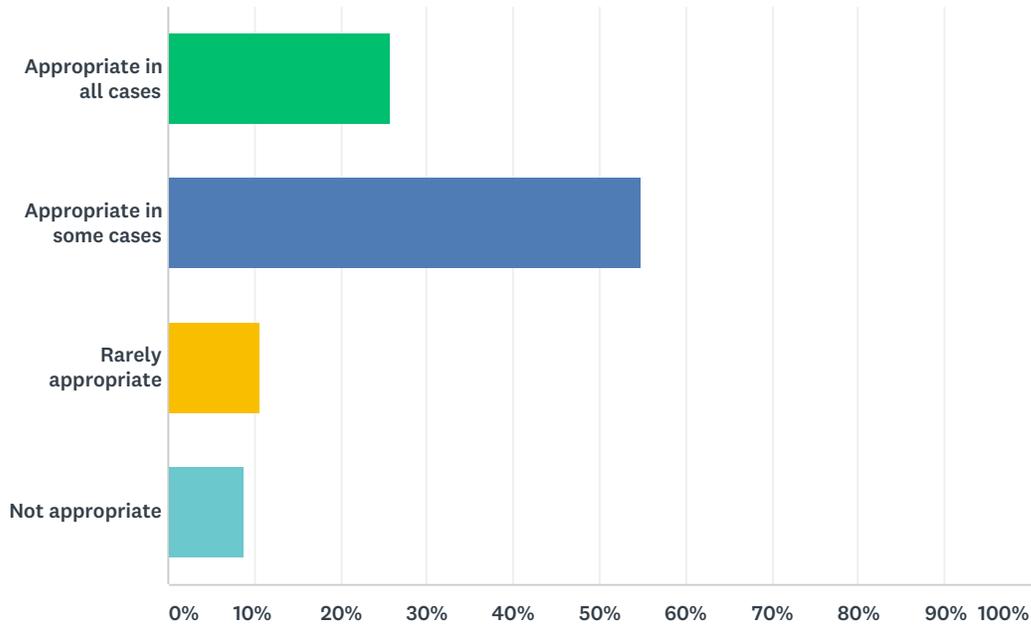
#	COMMENTS OR SUGGESTIONS FOR IMPROVEMENTS:	DATE
1	Parking should be accommodated on site - not depending on street parking	4/14/2018 7:37 PM
2	good idea	4/12/2018 2:02 PM
3	Lot split should not increase permitted FAR	4/9/2018 10:36 AM
4	If the historic structure is saved, the lot split should be allowed to go whichever direction.	4/5/2018 10:26 AM
5	Jane Jacobs states that new builds should be interwoven with old builds to gain a more complete timeline and aesthetic of a city/town/neighborhood. This is excellent.	4/5/2018 9:59 AM
6	no physical connection should be allowed when allowing lot split	4/4/2018 11:34 AM

Historic Preservation Benefits - Survey

7	I believe this is the most important benefit for ensuring sensitive development next to historic homes.	4/3/2018 7:35 PM
8	The historic value of a building should include the property it is on.	4/3/2018 3:51 PM
9	Appropriate in Most Cases.	4/3/2018 1:36 PM
10	Appropriate when fire ratings of exterior walls is not required for code when 2 buildings are too close together, and the lot is wide enough, and has adequate access to both homes as if they were individually built (including adequate parking for both.)	4/3/2018 1:16 PM
11	The reality however seems to be that the add on structures overwhelm the scale of the historic resource.	4/2/2018 6:21 PM
12	Depends on the size of the lot.	4/2/2018 4:18 PM
13	While sometimes appropriate, this can result in more density that negatively impacts the landmark. However, the new Design Guidelines are challenging to meet for new additions, so a lot split may be the best option.	4/2/2018 7:35 AM
14	Appropriate in all cases, if the lot size meets the minimal requirement.	4/1/2018 7:39 PM
15	Destroy's the character of the town	3/29/2018 8:34 PM
16	A small house will rarely fit the needs of many families.	3/29/2018 3:25 PM
17	Again, I like having this tool available to property owners. They can determine if it makes sense for them. The example below is wonderful!	3/29/2018 2:11 PM
18	Lot splits increase density and total developable SF due to exclusions. Lot splits are very valuable so an increase in (exempt or other) SF is inappropriate if lot split granted.	3/29/2018 1:40 PM
19	Style should be consistent	3/29/2018 1:00 PM
20	don't allow additions.	3/29/2018 12:36 PM
21	I do like the smaller massing.	3/29/2018 12:14 PM
22	"in scale" : a presumption that small is better. Not always so.	3/29/2018 12:11 PM
23	The architecture of the new, separate building takes away from the character of the neighborhood.	3/27/2018 8:25 PM
24	Building a mansion behind a historic house is a joke and an abuse of the system	3/27/2018 5:29 PM
25	except where we want to limit overall sq ft. building divide remains the best choice.	3/27/2018 11:49 AM

Q3 Variations: Historic properties are eligible for reductions in required building setbacks from property lines, reduction of parking requirements, and increase in maximum building footprint. This provides the property owner with flexibility given the fact a historic structure may occupy much of their lot, and variations may allow more sympathetic placement of new development on a historic property. My perception of the variation benefit is:

Answered: 113 Skipped: 10



ANSWER CHOICES	RESPONSES
Appropriate in all cases	25.66% 29
Appropriate in some cases	54.87% 62
Rarely appropriate	10.62% 12
Not appropriate	8.85% 10
TOTAL	113

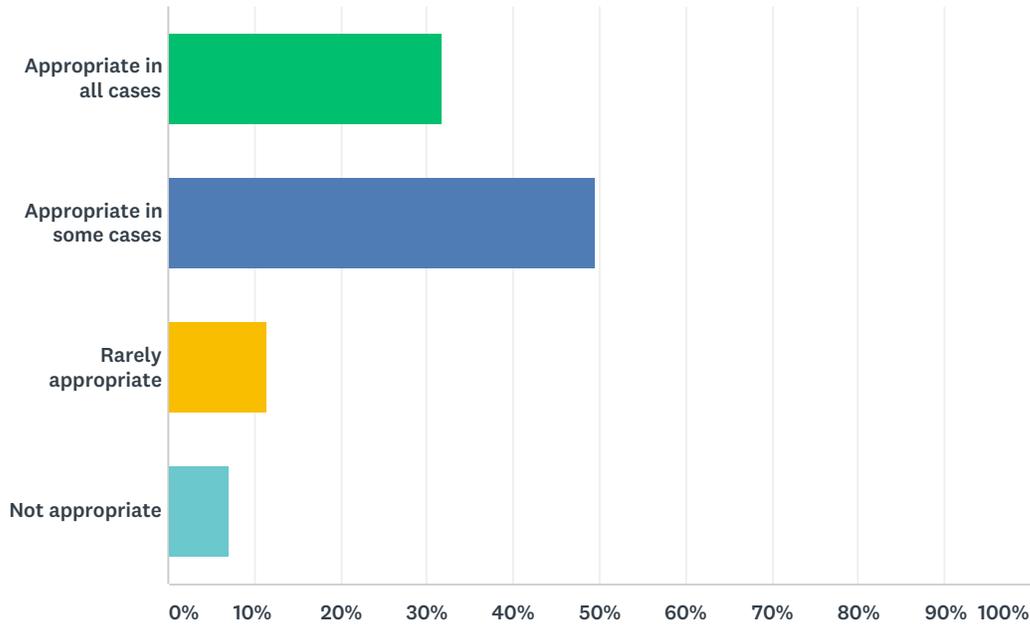
#	COMMENTS OR SUGGESTIONS FOR IMPROVEMENTS:	DATE
1	Street parking should not be an option	4/14/2018 7:38 PM
2	Should include permission to remove overgrown trees planted in historic times that threaten foundations OR are providing too much shade and blocking interface with the residential streets.	4/12/2018 2:03 PM
3	Reduction of set backs impacts neighbors	4/9/2018 10:37 AM
4	There's no a reason a shed should be considered historic. In this case the addition could be compensated by the removal of this shed. Allowing for more landscaping and a better design all around.	4/5/2018 10:03 AM
5	it needs to not	4/4/2018 9:53 PM

Historic Preservation Benefits - Survey

6	eligibility is appropriate in all cases; whether or not to grant the variation is appropriate in some cases	4/4/2018 4:25 PM
7	not appropriate when impacting neighbors or changing line of sight	4/4/2018 11:36 AM
8	Setback variations are appropriate almost all the time. I don't think parking variances should ever be allowed.	4/3/2018 7:36 PM
9	Not All cases, a scenario where a historical home's presence is dwarfed or diminutized is a scenario of failure.	4/3/2018 3:50 PM
10	Appropriate when the goal of design is historic preservation. NOT appropriate to give developers more square footage or relaxed requirements when developing on a historic lot.	4/3/2018 1:18 PM
11	I think it could be percentage based so that we retain green space. I think having yards increases the feel of having a community here.	4/3/2018 12:37 PM
12	Set backs for off street parking seem logical	4/2/2018 6:22 PM
13	Variations are necessary for all hp projects. They should not just be granted to the historic landmark, but also to the new construction. There needs to be a compromise on historic developments and appropriate variations for new construction that support good preservation and placement of additions is necessary.	4/2/2018 7:36 AM
14	In some cases a zero, or minimal setback id not sympathetic to the neighboring property.	4/1/2018 7:40 PM
15	We tried. We refused to pay the bribe demanded.	3/29/2018 8:35 PM
16	The more tools the better!	3/29/2018 2:12 PM
17	Front & back yard set back variances only - side yard set backs with adjacent properties produce unreasonable impact on neighboring lots.	3/29/2018 1:43 PM
18	This is only true of historic properties which already been "improved"	3/29/2018 1:01 PM
19	Leave the buildings they way they are.	3/29/2018 12:36 PM
20	Old buildings generate the same number of cars as new. Forgiveness of on-site parking just pushes the car on to the street.	3/29/2018 12:13 PM
21	Moving a historic house to make room for a mansion should never be approved	3/27/2018 5:29 PM
22	variances to set backs and parking requirements should be reviewed on a case by case bases to ensure they do not have negative impacts on the neighborhood and/or surrounding development	3/27/2018 10:19 AM

Q4 Square Footage Bonus: Historic preservation projects that demonstrate exemplary practices and meet specific criteria may be awarded up to 500 square feet of bonus square footage to construct on the site. This provides the property owner with additional value to off-set the potential extra costs of a historic preservation project. My perception of the square footage benefit is:

Answered: 113 Skipped: 10



ANSWER CHOICES	RESPONSES	
Appropriate in all cases	31.86%	36
Appropriate in some cases	49.56%	56
Rarely appropriate	11.50%	13
Not appropriate	7.08%	8
TOTAL		113

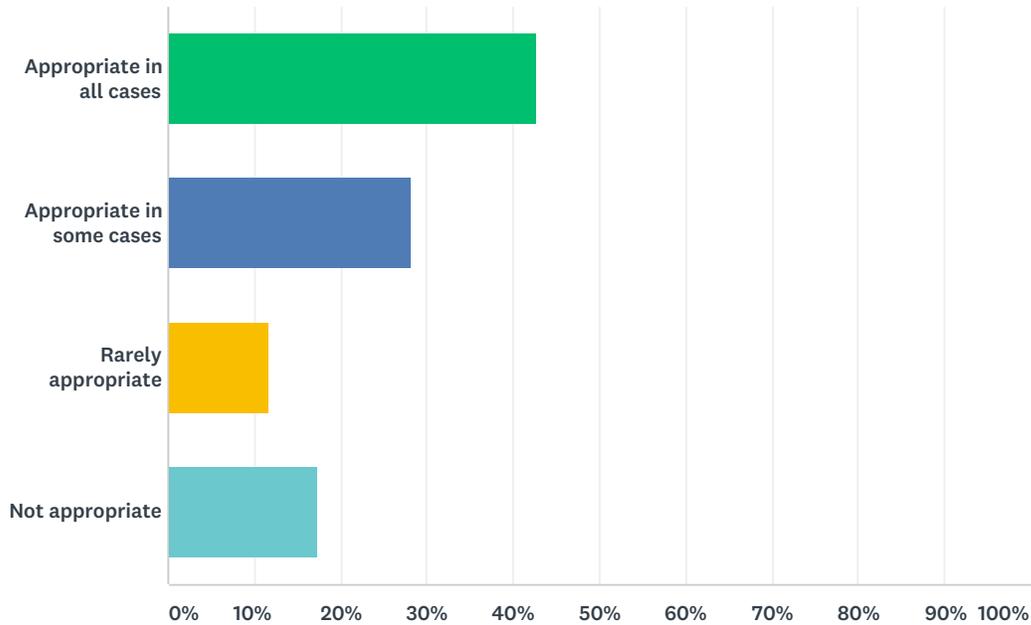
#	COMMENTS OR SUGGESTIONS FOR IMPROVEMENT:	DATE
1	Bonus SF should never become a TDR - must only be used within basic zoning, set backs without impact to other properties.	4/9/2018 10:38 AM
2	eligibility is appropriate in all cases but the granting of the bonus is case-by-case and that's appropriate	4/4/2018 4:26 PM
3	not in addition to TDRs	4/4/2018 11:39 AM
4	We should not be adding more development on historic properties.	4/3/2018 7:37 PM
5	When appropriate. Bonuses and incentives to keep very strict to a historic profile should be offered if they actually show that they encourage folks to embrace the historical qualities.	4/3/2018 3:52 PM

Historic Preservation Benefits - Survey

6	Not appropriate. Historic residences were typically small and allowing more footage than currently allowed only diminishes historical significance.	4/3/2018 1:19 PM
7	Historic buildings cannot be removed. The great number of renovations is for speculative resale purposes. Why because the developer is getting a free upzoning of additional sq footage. Question how many of the recently removed Victorian buildings have been done for owner occupants- very few. The free additional space is a developers dream because they didn't have to pay for the extra developable land. Eliminating it would likely result in lower prices for the properties for a while. But not for long since the supply is fixed.	4/2/2018 6:27 PM
8	The bonus provides an important award for the detail, time and patience required to go through the historic preservation review process and to accurately restore a historic home.	4/2/2018 7:38 AM
9	Rules are far too strict. One either has to ***** or spend thousands finding historic pictures. We tried and gave up.	3/29/2018 8:36 PM
10	If a property owner is performing outstanding stewardship, they should be commended for it. Historic properties are expensive to maintain and to improve. This is a great incentive!	3/29/2018 2:13 PM
11	500 square foot bonus is highly valuable and in my view typically too freely given - a bad trade for the community that creates excess value for property owner and impacts on neighbors in the form of increased development.	3/29/2018 1:45 PM
12	Connector requirement should be eliminated.	3/29/2018 1:32 PM
13	Live small. More square feet with fewer year round residents is not desirable	3/29/2018 1:03 PM
14	The point is to "PRESERVE". The whole neighborhood has to be considered. Taking one lot out of context ignores the overall effect. There is nothing in the "constitution" that says one has to have a bigger house. If you need a bigger house, go somewhere else.	3/29/2018 12:43 PM
15	real estate value is market driven. Extra cost of historic project? Myth.	3/29/2018 12:15 PM
16	Developers will always jump through hoops to increase square footage which is the only reason people want to do these projects	3/27/2018 5:31 PM
17	Where exemplary practices are demonstrated	3/27/2018 10:19 AM

Q5 Affordable Housing Reduction: Historic properties are allowed to provide less affordable housing mitigation than non-historic properties to offset the impacts of new development on the site. This alleviates the requirement to add more mass to a historic site in the form of affordable units and/or reduces a significant cost to the property owner, who can then direct those funds to preservation. My perception of the affordable housing reduction benefit is:

Answered: 110 Skipped: 13



ANSWER CHOICES	RESPONSES	
Appropriate in all cases	42.73%	47
Appropriate in some cases	28.18%	31
Rarely appropriate	11.82%	13
Not appropriate	17.27%	19
TOTAL		110

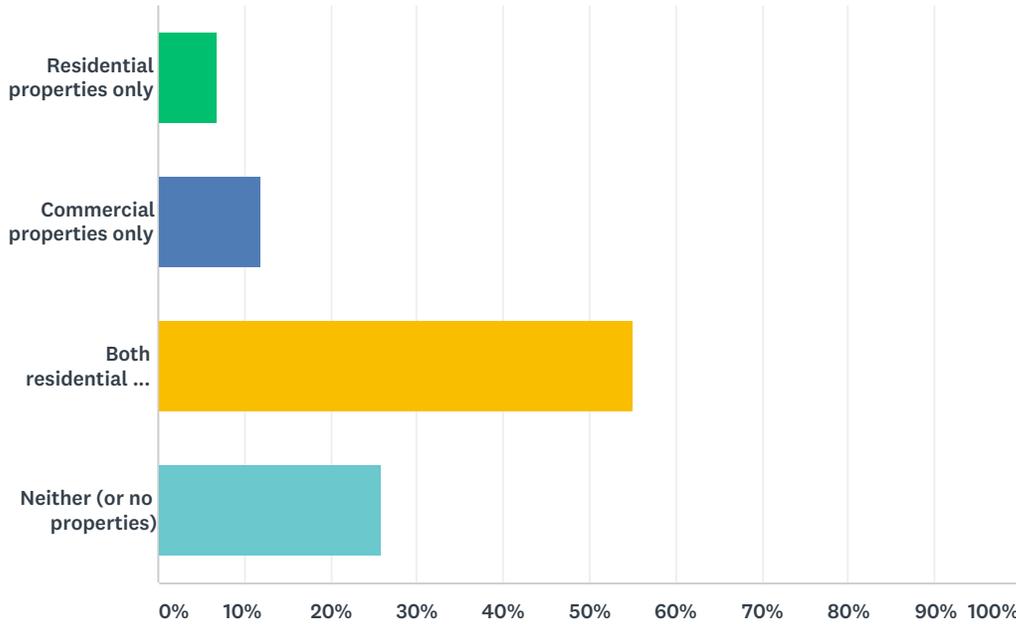
#	COMMENTS OR SUGGESTIONS FOR IMPROVEMENT:	DATE
1	AH is a critical community need that should not be burdened by Historic preservation.	4/9/2018 10:40 AM
2	If you're going to make me look at an eye-sore it better have some benefits to the community. In this case the whole thing should have been torn down.	4/5/2018 10:06 AM
3	I think commercial properties need to have more strict guidelines	4/4/2018 9:56 PM
4	with historic properties, an owner does not have the demolish option and renovation of historic fabric is often quite expensive and more expensive than demolishing and rebuilding would be. don't punish people for having to maintain a historic property by making it more expensive to work with than a non historic property. allow the offset to remain.	4/4/2018 4:28 PM

Historic Preservation Benefits - Survey

5	not appropriate if there are real increases in number of employees	4/4/2018 11:41 AM
6	I think commercial reductions are appropriate, but not residential reductions.	4/3/2018 7:37 PM
7	Who is actually building ADUs? They are mitigated to the city with a check, not an actual bed for a head. Obviously that check affords to build elsewhere, but could you imagine how cool it would be to live in an Affordable Housing Unit attached to a historic home? Cause I can't, too few of these exist. Some day none will.	4/3/2018 3:57 PM
8	housing requirements should be kept and the owner/builder need to offset housing somewhere other than the historic site. The buyers of these properties can afford it.	4/3/2018 1:51 PM
9	Again, not appropriate. Affordable housing or lack thereof has no impact on historical significance. This would be a loophole for a developer to overbuild and under-provide for the community.	4/3/2018 1:20 PM
10	Need more information.	4/3/2018 12:39 PM
11	However its questionable whether or not the "saved " fees actually result in better historic preservation.	4/2/2018 6:32 PM
12	HP projects are generally much more time consuming and expensive than typical non-historic development. Waiving affordable housing is an important balance to the overall development equation. The new Design Guidelines restrict above grade development on a site which will create a huge road block for onsite affordable housing.	4/2/2018 7:40 AM
13	This is an important cornerstone benefit and should continue to be available.	4/1/2018 7:47 PM
14	Bad example since it appears all work has stopped there and the suggestion of a new business is gone. Now an eye sore on Main. They should loose any exceptions. Dont let them add mass or avoid the affordable housing requirement. A business that purchases an historic building can pay for it and requires housing off site.	3/31/2018 8:03 AM
15	limit to commercial only	3/30/2018 11:19 AM
16	The idea of affordable housing is good. Many cities are now using. However, affordable housing does not bring more workers into the town. It just rewards the lucky few, many who retire and do not work in Aspne.	3/29/2018 8:38 PM
17	Waiver of AH fees for historic preservation unfairly burdens other community needs. \$100,000 AH fee is immaterial compared to acquisition and development cost.	3/29/2018 1:48 PM
18	The intent is desirable the actual consequences are not.	3/29/2018 1:05 PM
19	*****	3/29/2018 12:44 PM
20	"direct those funds to preservation." All development must meet AH requirements. In your example below - the developer needs no help. This is a purely commercial enterprise, and the for-profit venture must stand on its own.	3/29/2018 12:18 PM
21	I think that offsets like this are crucial to the affordability of renovated an historic structure.	3/29/2018 12:16 PM
22	The new developments often result in homes that are large enough they require several employees to run them, or at least several to manage them throughout the year.	3/28/2018 9:57 AM
23	On site mitigation for employee housing for residential (ADUs) have been removed from the land use code. The burden of employee housing should be shared equally by all development, especially businesses, with credit for the existing floor area that is remaining.	3/27/2018 10:25 AM

Q6 Exemptions or reduced affordable housing requirements is often one of the few Historic Preservation Benefits applicable to Commercial properties. Should this benefit be offered to:

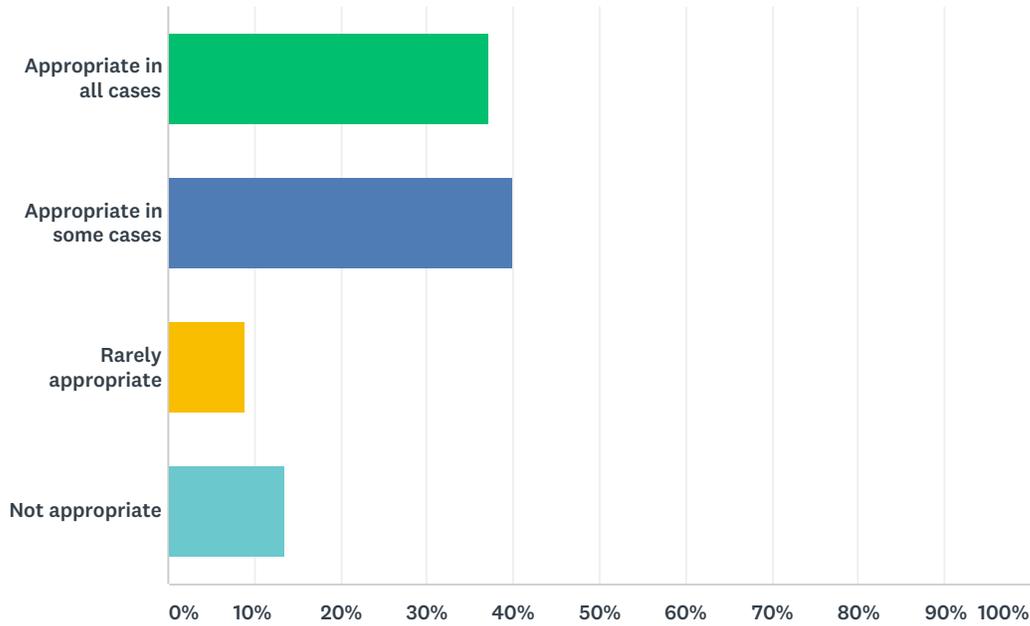
Answered: 100 Skipped: 23



ANSWER CHOICES	RESPONSES	
Residential properties only	7.00%	7
Commercial properties only	12.00%	12
Both residential and commercial properties	55.00%	55
Neither (or no properties)	26.00%	26
TOTAL		100

Q7 Development Fee Waivers: Historic properties may be allowed a reduction or waiver in fees associated with city parks, transportation, and parking that are typically charged to offset the impacts of new development. This reduces costs to the property owner, who can then direct those funds to preservation. My perception of development fee waiver benefit is:

Answered: 110 Skipped: 13



ANSWER CHOICES	RESPONSES	
Appropriate in all cases	37.27%	41
Appropriate in some cases	40.00%	44
Rarely appropriate	9.09%	10
Not appropriate	13.64%	15
TOTAL		110

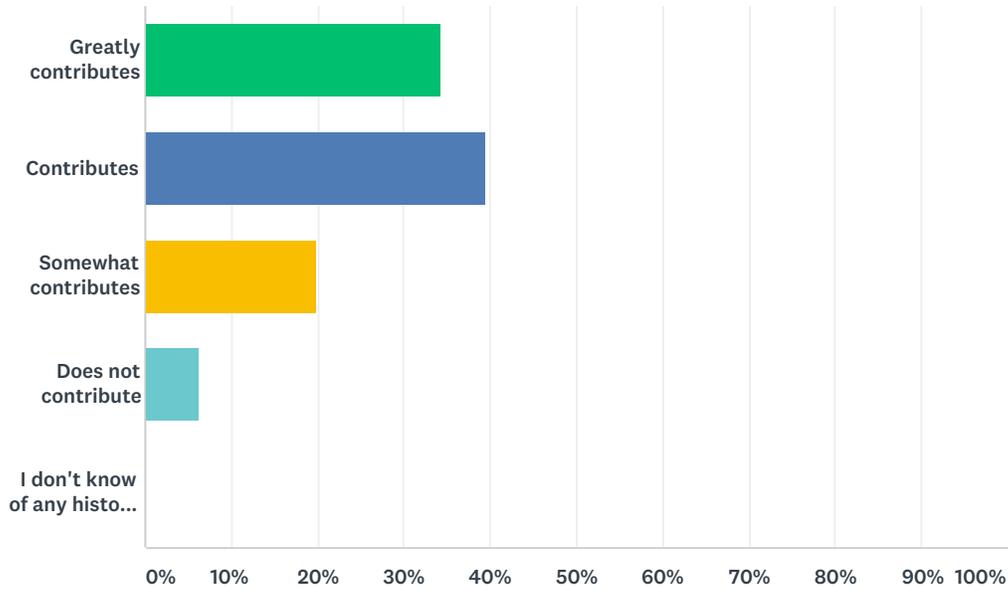
#	COMMENTS OR SUGGESTIONS FOR IMPROVEMENT:	DATE
1	Purchase price of a property should reflect the cost of development. Cost of fees should be borne by the seller/owner/new owner not the broader community.	4/9/2018 10:41 AM
2	When my client can save money wherever they can, that means I'm more likely to get that contract signed and which may lead to reallocated money into the project budget.	4/5/2018 10:08 AM
3	problem is, City Council never likes to grant any fee waivers	4/4/2018 4:28 PM
4	only for the historic properties which best reflect Aspen's history	4/4/2018 11:43 AM
5	These are relatively small fees, but can provide a major benefit to enable preservation. I think these are important to retain.	4/3/2018 7:38 PM

Historic Preservation Benefits - Survey

6	The buyers and owners of these properties can still afford to support parks, transportation and parking.	4/3/2018 1:52 PM
7	fees for tree removal should be removed. Too many historic houses are blocked from view or excessively shaded by evergreens in particular. Evergreens are generally not native to the valley floor.	4/2/2018 6:34 PM
8	The benefit of historic preservation to the community is on par with the Impact fees for Transportation/Air Quality and Parks. The community benefits from restored historic properties the same way that the community benefits from Parks and from Transportation initiatives.	4/2/2018 7:42 AM
9	Residential only. Commercial should pay to play!	3/31/2018 8:04 AM
10	Not a good idea. It promotes corruption.	3/29/2018 8:38 PM
11	A fourth generation aspen family should not be forced to sell and move out of aspen because of "affordable housing" fees	3/29/2018 1:07 PM
12	*****	3/29/2018 12:44 PM
13	"direct those funds to preservation"?? These are simply real estate deals - no help needed. You won't see any Aspen developers standing in line at the St. Mary's soup kitchen.	3/29/2018 12:21 PM
14	It is too time consuming and too expensive to renovate historic structures in Aspen. More waivers and more efficient and quicker approvals are helpful.	3/29/2018 12:18 PM
15	Saving 100k means nothing to these people, why are we giving them anything?	3/27/2018 5:32 PM

Q8 Do you think the historic preservation projects you are aware of in the community contribute to telling the unique story of Aspen's past?

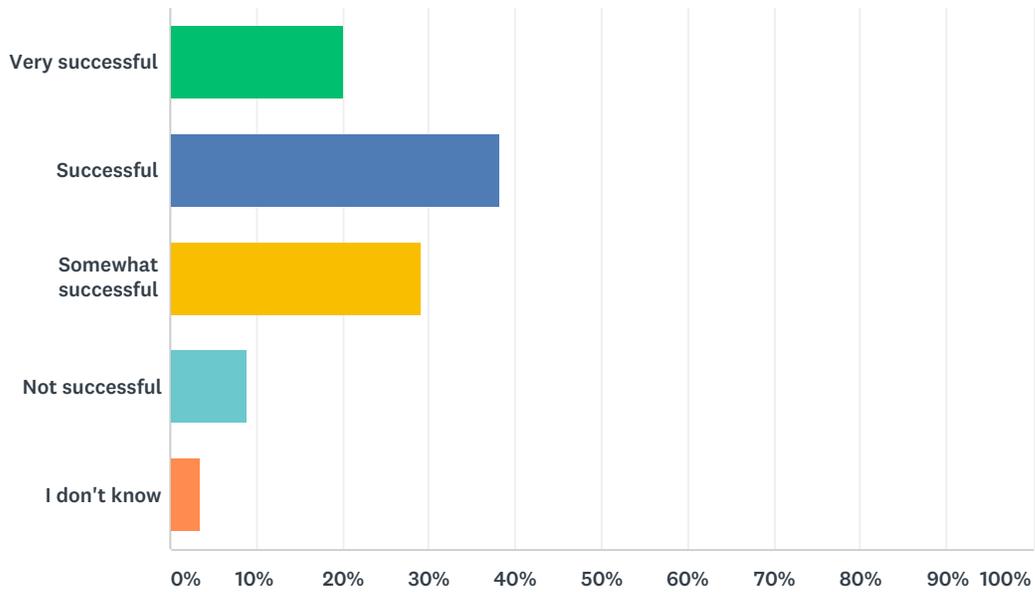
Answered: 111 Skipped: 12



ANSWER CHOICES	RESPONSES	
Greatly contributes	34.23%	38
Contributes	39.64%	44
Somewhat contributes	19.82%	22
Does not contribute	6.31%	7
I don't know of any historic preservation projects	0.00%	0
TOTAL		111

Q9 Do you think that the City of Aspen Historic Preservation Program is successful in retaining and maintaining historic landmarks?

Answered: 110 Skipped: 13



ANSWER CHOICES	RESPONSES	
Very successful	20.00%	22
Successful	38.18%	42
Somewhat successful	29.09%	32
Not successful	9.09%	10
I don't know	3.64%	4
TOTAL		110

Q10 Please provide your zip code of residence.

Answered: 109 Skipped: 14

#	RESPONSES	DATE
1	81611	4/14/2018 7:40 PM
2	81611	4/12/2018 2:05 PM
3	81611	4/11/2018 10:58 PM
4	81611	4/10/2018 10:31 AM
5	81611	4/10/2018 9:15 AM
6	81612	4/9/2018 3:36 PM
7	81611	4/9/2018 3:27 PM
8	81611	4/9/2018 10:42 AM
9	81621	4/6/2018 11:29 AM
10	81611	4/6/2018 10:30 AM
11	81611	4/6/2018 9:13 AM
12	81623	4/6/2018 8:41 AM
13	81611	4/5/2018 5:54 PM
14	81611	4/5/2018 11:55 AM
15	81611	4/5/2018 10:30 AM
16	81623	4/5/2018 10:17 AM
17	81611	4/5/2018 10:09 AM
18	81611	4/5/2018 7:54 AM
19	81611	4/4/2018 9:56 PM
20	81611	4/4/2018 4:29 PM
21	81611	4/4/2018 11:44 AM
22	81611	4/4/2018 9:48 AM
23	81621	4/3/2018 7:44 PM
24	81611	4/3/2018 7:38 PM
25	81611	4/3/2018 6:47 PM
26	81611	4/3/2018 4:47 PM
27	81611	4/3/2018 3:58 PM
28	81611	4/3/2018 3:55 PM
29	81611	4/3/2018 3:16 PM
30	81621	4/3/2018 2:44 PM
31	81623	4/3/2018 1:55 PM
32	81656	4/3/2018 1:52 PM
33	81611	4/3/2018 1:45 PM
34	80122	4/3/2018 1:42 PM
35	81611	4/3/2018 1:21 PM

Historic Preservation Benefits - Survey

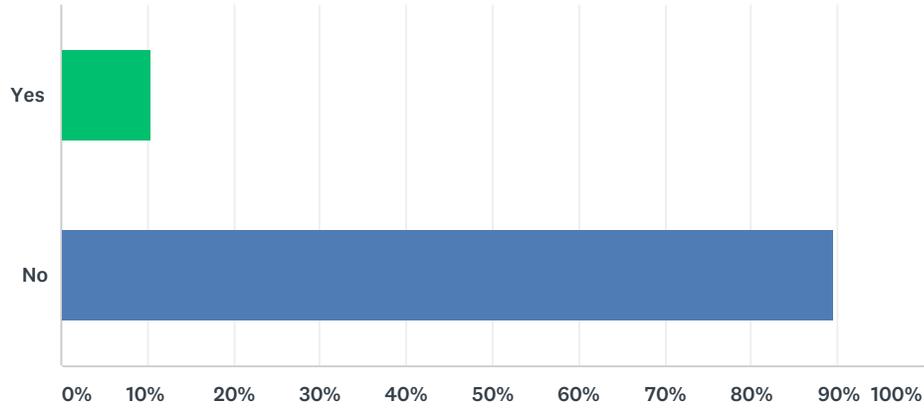
36	81611	4/3/2018 1:21 PM
37	20016	4/3/2018 1:17 PM
38	81623	4/3/2018 12:40 PM
39	81611	4/2/2018 6:35 PM
40	81611	4/2/2018 4:23 PM
41	81621	4/2/2018 10:19 AM
42	81611	4/2/2018 9:43 AM
43	81623	4/2/2018 8:29 AM
44	81611	4/2/2018 7:56 AM
45	81621	4/2/2018 7:43 AM
46	81611	4/1/2018 7:48 PM
47	81623	4/1/2018 12:44 PM
48	81611	3/31/2018 8:05 AM
49	81611	3/31/2018 7:33 AM
50	81611	3/30/2018 12:49 PM
51	81611	3/30/2018 11:20 AM
52	81611	3/30/2018 9:28 AM
53	81611	3/30/2018 8:01 AM
54	81623	3/29/2018 9:12 PM
55	81611	3/29/2018 9:02 PM
56	80220	3/29/2018 8:39 PM
57	81611	3/29/2018 8:17 PM
58	81611	3/29/2018 6:20 PM
59	81615	3/29/2018 6:09 PM
60	81611	3/29/2018 5:27 PM
61	81611	3/29/2018 5:04 PM
62	55345	3/29/2018 3:43 PM
63	81611	3/29/2018 3:28 PM
64	81611	3/29/2018 3:06 PM
65	81651	3/29/2018 2:47 PM
66	81611	3/29/2018 2:21 PM
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68	81654	3/29/2018 2:14 PM
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71	81654	3/29/2018 2:09 PM
72	85266	3/29/2018 1:51 PM
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76	81623	3/29/2018 1:27 PM

Historic Preservation Benefits - Survey

77	81612	3/29/2018 1:11 PM
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93	81611	3/29/2018 12:09 PM
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101	81611	3/27/2018 5:33 PM
102	81611	3/27/2018 5:09 PM
103	81612	3/27/2018 4:42 PM
104	81611	3/27/2018 12:16 PM
105	81611	3/27/2018 11:51 AM
106	81611	3/27/2018 11:38 AM
107	81611	3/27/2018 10:43 AM
108	81611	3/27/2018 10:28 AM
109	81611	3/27/2018 10:27 AM

Q11 Do you own a designated historic landmark in the City of Aspen?

Answered: 106 Skipped: 17



ANSWER CHOICES	RESPONSES	
Yes	10.38%	11
No	89.62%	95
TOTAL		106



Exhibit D
Stakeholder Meeting Summary

Historic Preservation Benefits Stakeholder Meeting

Date/Time: July 2, 2018 at 12:00-1:00 p.m.

Location: Aspen City Hall

List of Participants:

Planners: Sara Adams, Mitch Haas, Stan Clauson

Architects: Gilbert Sanchez, Derek Skalko, Sarah Broughton, Eric Westerman

Owners: Bill Guth, Howard Mallory, Lou Stover, David Harris

Interested Public: Dorothea Farris

Staff: Amy Simon, Ben Anderson, Kevin Rayes

Meeting Summary:

New Historic Preservation Design Guidelines:

- The new Design Guidelines are much more restrictive and this is a concern.
- The new Design Guidelines have caused some to walk away from pursuing historic projects.
- Since the implementation of the new Design Guidelines, new cases have slowed down.
- Corner lots have become difficult to take on. If incentives are not provided, people will avoid corner lots.
- Council's concerns regarding visual impact are a result of projects under the old Design Guidelines. Time is needed to test the new Design Guidelines. Some issues may resolve themselves.

Incentives/Benefits:

- Aspen's HP incentive program has been very successful over the years.
- Incentives are in good working order, no fixing required because it is not broken.
- Incentives are so important for HP projects.
- Focus on benefits that do not require expansion.
- Support parking reductions and waive fees for HP projects.
- Allow a mix of benefits.
- Cannot implement changes to the incentives with the new Design Guidelines. A breaking point will be reached where HP projects will be difficult to undertake.
- There is a disconnect between the 500 sf bonus and the TDR program.
- Without the incentive program, certain HP projects would not be possible to undertake.
- Preservation program will not go away if the bonuses go away.
- Floor Area Bonus: some more criteria would be good.



Financial Benefits:

- Monetary values are difficult to establish because there is not a standard cost. Each project is different. You shouldn't put an arbitrary cap on the value of incentives to be granted.
- A private property owner's financial gain should not be a concern. The City gains other things through the process.

Future Requests/Suggestions for Historic Preservation Program:

- Add worksession back, possibly as part of due diligence.
- Explain interior demolition and floor area impacts, partial removal is okay.
- Create a standard expectation for getting on HPC agenda and approximate timeframe.
- Add expedited timing and review process for HP projects.
- Reintroduce the idea of double basements for HPC projects.