

AGENDA

CITY COUNCIL REGULAR MEETING

October 8, 2019

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



REGULAR CITY COUNCIL MEETINGS ARE NOW ON TUESDAY

I. CALL TO ORDER

II. ROLL CALL

III. SCHEDULED PUBLIC APPEARANCES

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 #103 and #108, Series of 2019 - Contract for Sewer Line Under Burlingame Park and associated documents

VI.B. Resolution #104, Series of 2019 - Contract to Purchase Aspen Mini Storage Property
Staff recommends approval of Resolution 104 of 2019

VI.C. Resolution #105, Series of 2019 - Body worn camera contract

VI.D. Minutes - September 23, 2019

VII. NOTICE OF CALL-UP

VIII. FIRST READING OF ORDINANCES

IX. PUBLIC HEARINGS

- IX.A. Ordinance #22, Series of 2019 - Establishment of Transferable Development Rights (TDR) - 616 1/2 West Main Street - TO BE CONTINUED TO OCTOBER 22, 2019
- IX.B. Ordinance #25, Series of 2019 - prohibiting the possession of deadly weapons within city-owned buildings - TO BE CONTINUED TO OCTOBER 22, 2019

X. ACTION ITEMS

- X.A. Resolutions #109 and #110, Series of 2019 - Support of Propositions CC and DD

XI. ADJOURNMENT

MEMORANDUM

TO: Mayor and City Council
FROM: Chris Everson, Affordable Housing Development Project Manager
THRU: Scott Miller, Public Works Director
DATE OF MEMO: September 30, 2019
MEETING DATE: October 8, 2019
RE: Resolutions #103 and #108 of 2019: Contract for Sewer Line Under Burlingame Park and associated documents

REQUEST OF COUNCIL: Staff is requesting approval of attached Resolution #103 of 2019 and associated contract to install approximately 200 feet of 8" sewer line plus a manhole under Burlingame Park 2 which the City Parks Dept is currently constructing. Resolution #103 also authorizes supplemental budget authority for this work. Staff is also requesting approval of associated Resolution #108 of 2019 which authorizes the necessary sewer line easement and line extension agreement. These items are typical for sewer work with the Aspen San District.

PREVIOUS COUNCIL ACTION: The sewer line to be installed is included in the existing planned development approvals for Burlingame Ranch under Ordinance 22 of 2011.

DISCUSSION: City Parks staff has requested that this work be performed this fall so that the upper park (Park 2) can be completed and so that it will not have to be torn up and re-constructed when the full Burlingame Ranch Phase III housing construction project occurs starting in 2021. This specific area would likely be one of the first areas to be excavated in 2021, and in doing so this area of the new park would need to be excavated and then would need to be reconstructed at a cost of approximately \$40,000.

This sewer line will serve 223 and 225 Paepcke Drive when those buildings are constructed as part of Burlingame Ranch Phase III. Keep in mind that the City has approximately a \$10 million investment in infrastructure already installed in the Phase III area of the project site, so this is by far not the first investment the City has made in infrastructure for Burlingame Ranch Phase III.

The pool of qualified bidders for this work is limited to those contractors who are already approved to do work for the Aspen Consolidated Sanitation District. As such, the City sought bids from qualified contractors who are not only approved by Aspen San but who also are available to perform the work on short notice and who the City is not already using extensively on other projects. This limited the pool to two bidders:

Stutsman Gerbaz Earthmoving	\$117,634
Aspen Digger	\$135,302

The reason why the total amount in the contract submitted is higher than the bid amounts listed above is because after the bids were received and compared, traffic control and flagging needed to be added to the scope to manage the Burlingame bus route and our engineer also realized that there was existing curb and gutter in the area which will need to be removed and replaced at an additional cost. These items were added to the contract after bids were received, but these would have been needed to be added to both bids equally.

Due to the short notice and small scope, staff estimates that the premium being paid for this contract is some 25% to 30%. This is approximately equal to the amount being saved by not having to excavate and reconstruct this portion of the new park in the future. This will also allow the Parks team to complete their work and have the park ready for use and will limit the need to further disturb the area in the future.

FINANCIAL/BUDGET IMPACTS: Funding is available from the 150 Fund. The attached resolution authorizes supplemental budget authority for this work plus engineering fees.

RECOMMENDED ACTION: Staff recommends that Council approve Resolutions #103 and #108 of 2019 including the associated contract, supplemental budget, easement and line extension agreement.

CITY MANAGER COMMENTS: _____

ATTACHMENTS:

Exhibit A – Resolutions #103 and #108 of 2019 including the associated contract, easement and line extension agreement.

RESOLUTION #103
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AUTHORIZING SUPPLEMENTAL BUDGET AUTHORITY AND APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND STUTSMAN GERBAZ EARTHMOVING, INC. 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 construction between the City of Aspen and Stutsman Gerbaz Earthmoving, 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,

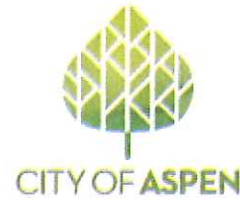
That the City Council of the City of Aspen hereby approves the supplemental budget amount of \$150,000 from the City’s 150 Housing Development Fund and the construction contract in the amount of \$141,980 between the City of Aspen and Stutsman Gerbaz Earthmoving, Inc., a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said contract on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 8th day of October, 2019.

Torre, 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 October 8, 2019.

Linda Manning, City Clerk



CONTRACT FOR CONSTRUCTION
(Short Form)

THIS CONTRACT, made and entered into on October 8, 2019, by and between the CITY OF ASPEN, Colorado, hereinafter called the "City", and Stutsman Gerbaz Earthmoving, hereinafter called the "Contractor".

THEREFORE, in consideration of the mutual covenants and Contracts herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Construction of Project.** Contractor agrees to furnish all labor, materials, tools, machinery, equipment, temporary utilities, transportation and any other facilities needed therefor, and to complete in a good, workmanlike and substantial manner the Project as described in the Scope of Work and Proposal appended hereto as **Exhibit "A"** which is incorporated herein as if fully set forth (the "Project").

2. **Plans and Specifications; Compliance with Laws.** The Project is to be constructed and completed in strict conformance with the Scope of Work and/or Proposal appended hereto for the same approved in writing by the parties hereto. The Project shall also be constructed and completed in strict compliance with all laws, ordinances, rules, regulations of all applicable governmental authorities, and the City of Aspen Procurement Code, Title 4 of the Municipal Code, including the approval requirements of Section 4-08-040. Contractor shall apply for and obtain all required permits and licenses and shall pay all fees therefor and all other fees required by such governmental authorities. All work must also be performed in strict conformance with all standards and requirements of the Aspen Consolidated Sanitation District.

3. **Payments to Contractor.** In consideration of the covenants and Contracts herein contained being performed and kept by Contractor, including the supplying of all labor, materials and services required by this Contract, and the construction and completion of the Project, City agrees to pay Contractor a sum not to exceed \$141,980.00 or as shown on **Exhibit "A"**.

4. **Commencement and Completion.** Contractor agrees to commence work ~~hereunder immediately upon execution hereof,~~ to prosecute said work thereafter diligently and continuously to completion, and in any and all events to substantially complete the same not later than November 15, 2019, subject to such delays as are permissible under the "Extension of Time for Completion" section of this Contract.

5. Payment of Bills and Charges. Contractor shall pay promptly all valid bills and charges for material, labor, machinery, equipment or any other service or facility used in connection with or arising out of the Project, and shall obtain periodic releases from all subcontractors and material suppliers supplying labor or materials to the Project concurrently with Contractor's delivering any payment to such subcontractors and material suppliers. Contractor shall indemnify and hold City and City's officers, employees, agents, successors and assigns free and harmless against all expenses and liability suffered or incurred in connection with the claims of any such subcontractors or material suppliers, including but not limited to court costs and attorney's fees resulting or arising therefrom; provided that Contractor shall be excused from this obligation to the extent that City is in arrears in making the payments to Contractor. Should any liens or claims of lien be filed of record against the Property, or should Contractor receive notice of any unpaid bill or charge in connection with construction of the Project, Contractor shall immediately either pay and discharge the same and cause the same to be released of record, or shall furnish City with the proper indemnity either by title policy or by corporate surety bond in the amount of 150% of the amount claimed pursuant to such lien.

6. Releases. Contractor shall, if requested by City, before being entitled to receive any payment due, furnish to City all releases obtained from subcontractors and material suppliers and copies of all bills paid to such date, properly receipted and identified, covering work done and the materials furnished to the Project and showing an expenditure of an amount not less than the total of all previous payments made hereunder by City to Contractor.

7. Hierarchy of Project Documents. This Contract and the Proposal or Scope of Work appended hereto as **Exhibit "A"** are intended to supplement one another. In case of conflict, however, this Contract shall control both.

8. Changes in the Work. Should the City at any time during the progress of the work request any modifications, alterations or deviations in, additions to, or omissions from this Contract or the Proposal/Scope of Work, it shall be at liberty to do so, and the same shall in no way affect or make void this Contract; but the amount thereof shall be amortized over the remaining term of this Contract and added to or deducted, as the case may be, from the payments set forth in Paragraph 3 above by a fair and reasonable valuation, based upon the actual cost of labor and materials. This Contract shall be deemed to be completed when the work is finished in accordance with the original Proposal or Scope of Work as amended or modified by such changes, whatever may be the nature or the extent thereof. The rule of practice to be observed in fulfillment of this paragraph shall be that, upon the demand of either City or Contractor, the character and valuation of any or all changes, omissions or extra work shall be agreed upon and fixed in writing, signed by City and Contractor, prior to performance.

9. Contractor's Failure to Perform. Should Contractor, at any time during the progress of the work, refuse or fail to supply sufficient material or workmen for the expeditious progress of said work or fail to perform any other provisions of this Contract,

City may, upon giving notice in writing to Contractor as provided herein and upon Contractor's failure to remedy any such failure within 3 days from receipt of such notice, terminate this Contract and provide the necessary material and workmen to finish the work and may enter upon the Property for such purpose and complete said work. The expense thereof shall be deducted from the payments remaining under Paragraph 3 above, or if the total cost of the work to City exceeds the amount of such remaining payments, Contractor shall pay to City upon demand the amount of such excess in addition to any and all other damages to which City may be entitled. In the event of such termination, City may take possession of all materials, equipment and appliances belonging to Contractor upon or adjacent to the Property upon which said work is being performed and may use the same in the completion of said work. Such termination shall not prejudice or be exclusive of any other legal rights which City may have against Contractor.

10. Extension of Time for Completion. Time is of the essence of this Contract and Contractor shall substantially complete the work during the time provided for herein. However, the time during which Contractor is delayed in said work by (a) the acts of City or its agents or employees or those claiming under Contract with or permission from City, or (b) the acts of God which Contractor could not have reasonably foreseen and provided against, or (c) unanticipated stormy or inclement weather which necessarily delays the work, or (d) any strikes, boycotts or obstructive actions by employees or labor organizations and which are beyond the control of Contractor and which it cannot reasonably overcome, or (e) the failure of City to make progress payments promptly, shall be added to the time for completion of the work by a fair and reasonable allowance. Contractor recognizes, however, that the site of the work is in the Rocky Mountains at a high elevation where inclement weather conditions are common. This fact has been considered by Contractor in preparing its Proposal and in agreeing to the Scope of Work. Furthermore, Contractor shall have the right to stop work if any payment, including payment for extra work, is not made to Contractor as provided in this Contract. In the event of such nonpayment, Contractor may keep the job idle until all payments then due are received.

11. Unforeseen Conditions. It is understood and agreed that Contractor, before incurring any other expenses or purchasing any other materials for the Project, shall proceed to inspect the work site and all visible conditions and that if, at the time of inspection therefor, the Contractor finds that the proposed work is at variance with the conditions indicated by the Proposal, Scope of Work, or information supplied by City, or should Contractor encounter physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract or inherent in a work site located in the Rocky Mountains, Contractor shall so notify City, and City shall at that time have the right and option to immediately cancel and terminate this Contract or to instruct Contractor to continue the work and add the additional amount attributable to such unforeseen conditions to the payments due Contractor as set forth above.

It is agreed that in the event of any cancellation by City in accordance with this section, Contractor shall be paid the actual costs of the work done prior to the time of

cancellation. In computing such costs, building permit fees, insurance and such financing and title charges as are not refundable shall be included; provided that supervision time, office overhead and profit shall not be included in such costs to be refunded to Contractor by reason of such cancellation.

12. Acceptance by City. No payment hereunder nor occupancy of said improvements or any part thereof shall be construed as an acceptance of any work done up to the time of such payment or occupancy, but the entire work is to be subject to the inspection and approval of City at the time when Contractor notifies City that the Project has been completed.

13. Notice of Completion; Contractor's Release. City agrees to sign and file of record within five (5) days after the substantial completion and acceptance of the Project a Notice of Completion. If City fails to so record the Notice of Completion within said five (5) day period, City hereby appoints Contractor as City's agent to sign and record such Notice of Completion on City's behalf. This agency is irrevocable and is an agency coupled with an interest. Contractor agrees upon receipt of final payment to release the Project and property from any and all claims that may have accrued against the same by reason of said construction. If Contractor faithfully performs the obligations of this Contract on its part to be performed, it shall have the right to refuse to permit occupancy of any structures by City or City's assignees or agents until the Notice of Completion has been recorded and Contractor has received the payment, if any, due hereunder at completion of construction, less such amounts as may be retained pursuant to mutual Contract of City and Contractor under the provisions of Paragraph 3 above.

14. 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.

15. Insurance.

a. The 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 the terms of this Contract. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the terms of this Contract 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, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed in the Supplemental Conditions. If the Supplemental Conditions do not set forth minimum insurance coverage, then the minimum coverage shall be as set forth below. Such coverage shall be procured and maintained with forms and insurance acceptable to City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the terms of this Contract. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. *Workmen's 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 Workmen's Compensation requirements of this paragraph.

2. *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 include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

3. *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 Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no

owned automobiles, the requirements of this Section 5.4.2.3 shall be met by each employee of the Contractor providing services to the City under this contract.

c. Except for any Contractor Liability insurance that may be required, the policy or policies required above shall be endorsed to include the City of Aspen and the City of Aspen's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City of Aspen, its officers or employees, or carried by or provided through any insurance pool of the City of Aspen, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy 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.

d. **The certificate of insurance** provided to the City of Aspen shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and **shall be reviewed and approved by the City of Aspen 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 coverage 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 of Aspen.

e. In addition, these Certificates of Insurance shall contain the following clauses:

Underwriters and issuers shall have no right of recovery or subrogation against the City of Aspen, it being the intention of the parties that the insurance policies so effected shall protect all parties and be primary coverage for any and all losses covered by the above-described insurance. To the extent that the City's insurer(s) may become liable for secondary or excess coverage, the City's underwriters and insurers shall have no right of recovery or subrogation against the Contractor.

The insurance companies issuing the policy or policies shall have no recourse against the City of Aspen for payment of any premiums or for assessments under any form of policy.

Any and all deductibles in the above-described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Proposer.

Location of operations shall be: "All operations and locations at which work in connection with the referenced project is done."

Certificates of Insurance for all renewal policies shall be delivered to the Architect at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on the expiration date of this Contract or thereafter.

e. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, 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. All moneys so paid by City shall be repaid by Contractor to City upon demand, or City may offset the cost of the premiums against moneys due to Contractor from City.

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

16. Damage or Destruction. If the Project is destroyed or damaged by any accident or disaster, such as fire, storm, flood, landslide, earthquake, subsidence, theft or vandalism, any work done by Contractor in rebuilding or restoring the work shall be paid for by City as extra work under Paragraph 8 above. If, however, the estimated cost of replacement of the work already completed by Contractor exceeds twenty (20%) percent of the insured sum set forth in Paragraph 14 above, City shall have the option to cancel this Contract and, in such event, Contractor shall be paid the reasonable cost, including net profit to Contractor in the amount of ten (10%) percent, of all work performed by Contractor before such cancellation.

17. Notices. Any notice which any party is required or may desire to give to any other party shall be in writing and may be personally delivered or given or made by United States mail addressed as follows:

To City:

City of Aspen

130 South Galena Street

Aspen, Colorado 81611

To Contractor:

subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given, delivered or made by United States mail, shall be deemed to have been given the same day as transmitted by telecopier or delivered personally, one day after consignment to overnight courier service such as Federal

Express, or two days after the deposit in the United States mail as registered or certified matter, addressed as above provided, with postage thereon fully prepaid.

18. Inspections; Warranties.

(a) Contractor shall conduct an inspection of the Project prior to final acceptance of the work with City.

(b) Contractor shall schedule and cause to be performed all corrective activities necessitated as a result of any deficiencies noted on the final inspection prior to acceptance. The costs of material and/or labor incurred in connection with such corrective activities shall not be reimbursed or otherwise paid to Contractor.

(c) Contractor shall obtain, at City's expense, third party warranty contracts (to be entered into by City).

19. Licensure of Contractor. Contractor hereby represents and warrants to City that Contractor is duly licensed as a general contractor in the State of Colorado, and if applicable, in the County of Pitkin.

20. Independent Contractor. It is expressly acknowledged and understood by the parties that nothing in this Contract shall result in, or be construed as establishing an employment relationship. The Contractor shall be, and shall perform as, an independent the Contractor who agrees to use his best efforts to provide the Work on behalf of the City. No agent, employee, or servant of the Contractor shall be, or shall be deemed to be, the employee, agent or servant of the City. The City is interested only in the results obtained under the Contract Documents. The manner and means of conducting the Work are under the sole control of the Contractor. None of the benefits provided by the City to its employees including, but not limited to, worker's compensation insurance and unemployment insurance, are available from the City to the employees, agents or servants of the Contractor. The Contractor shall be solely and entirely responsible for its acts and for the acts of the Contractor's agents, employees, servants and subcontractors during the performance of the Contract.

THE CONTRACTOR, AS AN INDEPENDENT CONTRACTOR, SHALL NOT BE ENTITLED TO WORKERS' COMPENSATION BENEFITS AND SHALL BE OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THE CONTRACT.

21. Assignment. This Contract is for the personal services of Contractor. Contractor shall not transfer or assign this Contract or its rights and responsibilities under this Contract nor subcontract to others its rights and responsibilities under this Contract, and any attempt to do so shall be void and constitute a material breach of this Contract.

22. Successors and Assigns. Subject to paragraph 22, above, this Contract shall be binding on, and shall inure to the benefit of, City and Contractor and their respective successors and assigns.

23. Entire Contract. This Contract contains the entire Contract between City and Contractor respecting the matters set forth herein and supersedes all prior Contracts between City and Contractor respecting such matters.

24. Waivers. No waiver by City or Contractor of any default by the other or of any event, circumstance or condition permitting either to terminate this Contract shall constitute a waiver of any other default or other such event, circumstance or condition, whether of the same or of any other nature or type and whether preceding, concurrent or succeeding; and no failure or delay by either City or Contractor to exercise any right arising by reason of any default by the other shall prevent the exercise of such right while the defaulting party continues in default, and no waiver of any default shall operate as a waiver of any other default or as a modification of this Contract.

25. Remedies Non-Exclusive. No remedy conferred on either party to this Contract shall be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy.

26. Governing Law. This Contract shall be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any action at law or equity shall be Pitkin County.

27. Attorneys' Fees. If either party to this Contract shall institute any action or proceeding to enforce any right, remedy or provision contained in this Contract, the prevailing party in such action shall be entitled to receive its attorneys' fees in connection with such action from the non-prevailing party.

28. Severability. Any provision in this Contract which is held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of this Contract are declared to be severable.

29. Nondiscrimination. During the performance of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, sexual orientation, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, sex, age, sexual orientation, handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

30. Prohibited Interest. No member, officer, or employee of the City of Aspen, Pitkin County or the Town of Snowmass Village shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

31. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflict of Interest:

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

b. The 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 of 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 Contract or to any solicitation or proposal therefor.

c. It shall be a material breach of the Contract for any payment, gratuity, or offer of employment to be made by or on behalf of a Subcontractor under a contract to the prime Contractor or higher tier Subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. The Contractor is prohibited from inducing, by any means, any person employed under this Contract to give up any part of the compensation to which he/she is otherwise entitled. The Contractor shall comply with all applicable local, state and federal "anti-kickback" statutes or regulations.

32. Payments Subject to Annual Appropriations. If the contract awarded extends beyond the calendar year, nothing herein shall be construed as an obligation by the City beyond any amounts that may be, from time to time, appropriated by the City on an annual basis. It is understood that payment under any contract is conditional upon annual appropriation of funds by said governing body and that before providing services, the Contractor, if it so requests, will be advised as to the status of funds appropriated for services or materials and shall not be obligated to provide services or materials for which funds have not been appropriate.

33. 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.

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, Contractor certifies and represents that at this time:

(i) Contractor does not knowingly employ or contract with an illegal alien; and

(ii) Contractor has participated or attempted to participate in the Basic Pilot Program in order to verify that it does not employ illegal aliens.

d. Contractor hereby certifies that:

(i) Contractor 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) Contractor shall not enter into a contract with a subcontractor that fails to confirm to the Contractor 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) Contractor has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Contractor does not

employ any new employees who are not eligible for employment in the United States; and if Contractor has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Contractor 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. Contractor 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 Contractor 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) Contractor 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 Contractor 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, Contractor shall:

(1) Notify such subcontractor and the City of Aspen within three days that Contractor 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 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.

(vi) 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.

(vii) 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 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 Contractor's violation of Subsection 8-17.5-102, C.R.S.

(ix) If Contractor operates as a sole proprietor, Contractor hereby swears or affirms under penalty of perjury that the Contractor (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.

34. 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.

IN WITNESS WHEREOF, the parties agree hereto have executed this Contract for Construction on the date first above written.

ATTESTED BY:

CITY OF ASPEN, COLORADO

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTESTED BY:

CONTRACTOR:

 _____

By:  _____

Title: PRESIDENT STUJSMAN - GERBAZ INC.

Note: Certification of Incorporation on next page shall be executed **if Contractor is a Corporation**. If a partnership, the Contract shall be signed by a Principal and indicate title.

CERTIFICATE OF INCORPORATION

(To be completed if Contractor is a Corporation)



STATE OF Colorado)
COUNTY OF Pitkin) SS.

On this 27th day of September, 2019, before me appeared

Lisa Ann Thorpe, to me personally known, who, being by me first duly sworn, did say that s/he is Owner of Stutsman-Gerbaz, Inc. and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said deponent acknowledged said instrument to be the free act and deed of said corporation.

WITNESS MY HAND AND NOTARIAL SEAL the day and year in this certificate first above written.

Notary Public

119 Aspen Business Center, Unit E
Aspen, CO 81611 Address

My commission expires: November 14, 2022

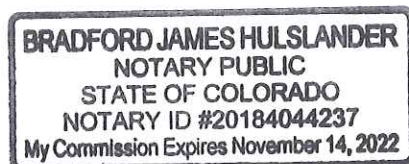


Exhibit A - Proposal

Stutsman-Gerbaz Inc.
 30376 Highway 82
 Snowmass, CO 81654
 970 923-2734
 9/27/2019

Burlingame Ranch Phase II
 Building & Sanitary Sewer Main Installation.

Bid Breakdown	Qty	Unit	Cost	Unit	Xtd Cost	Comment
General Conditions						
Mobilization	1	ls	@ \$ 2,520.00	p/ls	\$ 2,520.00	
Bond	1	ls	@ \$ 3,768.00	p/ls	\$ 3,768.00	
ROW / ENCR Permits	1	ea	@ \$ 1,270.00	p/ea	\$ 1,270.00	
Const staking, surveying for as builts & as built drawing.	1	ea	@ \$ 5,700.00	p/ea	\$ 5,700.00	
Camera the new 8" line	2	times	@ \$ 2,200.00	p/ea	\$ 4,400.00	
Portable toilet rental	1	ea	@ \$ 317.00	p/ea	\$ 317.00	
Total station layout/supervision	4	hrs	@ \$ 120.00	p/hr	\$ 480.00	Asbuilts
Water truck for dust control	20	hrs	@ \$ 110.00	p/hr	\$ 2,200.00	
				Total	\$ 20,655.00	
Erosion Control						
BMP's	1	ls	@ \$ 620.00	p/ls	\$ 320.00	See tabs below for breakdowns
				Total	\$ 620.00	
Traffic control.						
Traffic control plan	1	ls	@ \$ 148.50	each.	\$ 148.50	
Two flaggers, signs and cones.	10	days	@ \$ 928.40	p/day	\$ 9,284.00	
				Total	\$ 9,432.50	
Install 8" & 4" SDR 26						
Set and remove road plates.	1	ls	@ \$ 3,870.00	p/ls	\$ 3,870.00	See tabs below for breakdowns
Camera the line	2	times	@ \$ 2,200.00	each	\$ 4,400.00	To accommodate after hours and morning traffic.
				Total	\$ 68,201.50	
Manholes						
	1	ls	@ \$ 35,440.10	p/ls	\$ 35,440.10	See tabs below for breakdowns
				Total	\$ 35,440.10	
Remove Asphalt, Mill & Asphalt Patch						
Remove and replace an 8 lf section of curb.	1	ls	@ \$ 5,739.50	p/ls	\$ 5,739.50	See tabs below for breakdowns
	1	ls	@ \$ 2,511.68	p/ls	\$ 2,511.68	
				Total	\$ 8,251.18	
Total Bid Price				Total	\$ 141,980.28	

Notes

Price shown does not include payment & performance bond.
 See attached Pages for notes and assumptions
 Rock Clause, Frost Clause, Dewatering Clause
 Soil Compaction Testing is included

Tax is not included
 Landscape, sod, seeding & revegetation by others
 Any relocation of existing utilities will be T&M
 Removing and replacing boulder walls currently under construction is not included.
 Estimate assumes ability to close Mining Stock Parkway to through traffic from 8:30 AM to 4:00 PM daily.

RESOLUTION #108
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING AN EASEMENT AND A LINE EXTENSION MODIFICATION AGREEMENT BETWEEN THE CITY OF ASPEN AND ASPEN CONSOLIDATED SANITATION DISTRICT AUTHORIZING THE CITY MANAGER TO EXECUTE SAID EASEMENT AND LINE EXTENSION MODIFICATION AGREEMENT.

WHEREAS, there has been submitted to the City Council an Easement and a Line Extension Modification Agreement between the City of Aspen and the Aspen Consolidated Sanitation District, true and accurate copies of which are 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 Easement and Line Extension Modification Agreement between the City of Aspen and the Aspen Consolidated Sanitation District, copies of which are annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said Easement and Line Extension Modification Agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 8th day of October, 2019.

Torre, 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 October 8, 2019.

Linda Manning, City Clerk

EASEMENT

THIS EASEMENT is made this 2nd day of October, 2019, by and between the City of Aspen (hereinafter referred to as "Grantor") and the Aspen Consolidated Sanitation District, a quasi-municipal corporation of the State of Colorado within the County of Pitkin (hereinafter referred to as "District").

WITNESSETH

That for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by District to Grantor, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey unto the District, its successors and assigns, an exclusive perpetual easement, twenty (20) feet in width, and a right therein to construct, install, remove, replace, add to, maintain, repair, operate, change or alter underground sewer lines, manholes, and appurtenances thereto, as well as for ingress and egress over and across such easement; together with any and all necessary rights-of-way for convenient ingress and egress thereto and therefrom, and the right to occupy and use, from time to time, as much of the adjoining land of the Grantor as may be reasonably be necessary for any of the aforesaid purposes, over, under and across the following described premises, situate in the County of Pitkin, State of Colorado, to-wit:

located on certain parcel of land owned by the Grantor, situated in the City of Aspen, County of Pitkin, Colorado, described in Book 102, Page 69, of the records maintained by the Clerk and Recorder of Pitkin County, and more particularly described as:

SEE ATTACHED EXHIBIT A

20' WIDE SANITARY SEWER EASEMENT DESCRIPTION

A 20 FOOT WIDE SANITARY SEWER EASEMENT LOCATED ON PORTIONS OF PARK B AND TRACT 3, ACCORDING TO THE FINAL PLAT OF BURLINGAME RANCH AFFORDABLE HOUSING, FILING NO. 1 FINAL SUBDIVISION PLAT - SECOND AMENDMENT AS RECORDED AS RECEPTION NO. 598456 OF THE PITKIN COUNTY RECORDS. SAID EASEMENT SITUATED IN SECTION 2, TOWNSHIP 10 SOUTH, RANGE 85 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

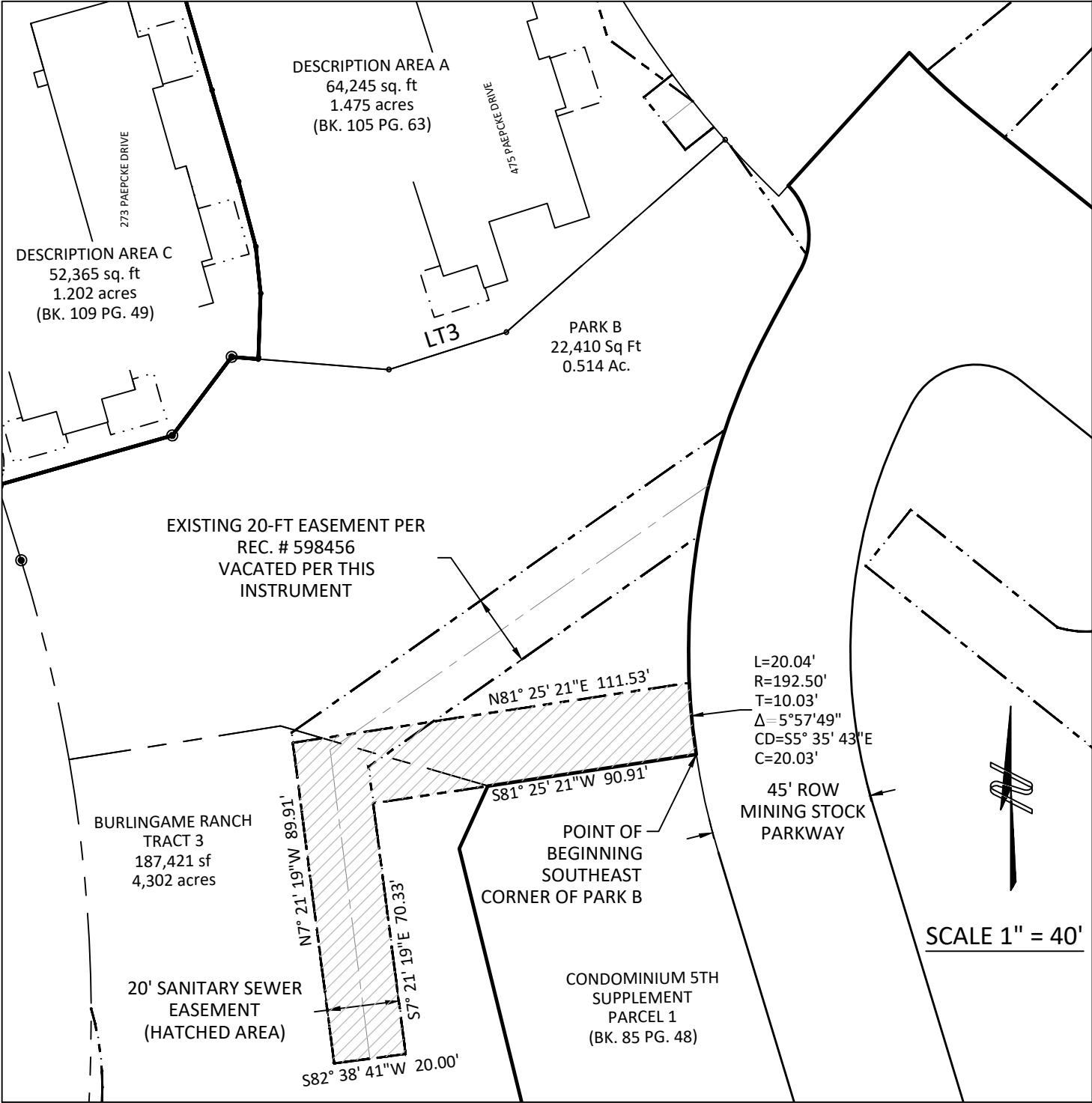
BEGINNING AT THE SOUTHEAST CORNER OF SAID PARK B; THENCE S.81°25'21".W ALONG THE SOUTHERLY BOUNDARY AND SOUTHERLY BOUNDARY LINE EXTENDED OF SAID PARK B, A DISTANCE OF 90.91 FEET; THENCE LEAVING SAIDSOUTHERLY BOUNDARY AND SOUTHERLY BOUNDARY LINE EXTENDED S.7°21'19".E, A DISTANCE OF 70.33 FEET; THENCE S.82°38'41".W, A DISTANCE OF 20.00 FEET; THENCE N.7°21'19".W, A DISTANCE OF 89.91 FEET; THENCE N.81°25'21".E, A DISTANCE OF 111.53 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY MINING STOCK PARKWAY; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY 20.04 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 192.50 FEET AND A CENTRAL ANGLE OF 5°35'43" WITH A CHORD BEARING OF S.5°57'49".E FOR A DISTANCE OF 20.03 FEET, TO THE POINT OF BEGINNING. SAID SANITARY SEWER EASEMENT CONTAINING 0,000 SQUARE FEET, MORE OR LESS.

Grantor warrants that the Grantor has the lawful right to grant such an easement,

27

SANITARY SEWER EASEMENT
BURLINGAME RANCH PHASE II
BUILDING 8 SANITARY SEWER MAIN

A TRACT OF LAND SITUATED IN WEST HALF OF SECTION 2, TOWNSHIP 10 SOUTH, RANGE 85 WEST OF THE 6TH P.M.,
CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO.
SHEET 1 OF 1



20' WIDE SANITARY SEWER EASEMENT DESCRIPTION

A 20 FOOT WIDE SANITARY SEWER EASEMENT LOCATED ON PORTIONS OF PARK B AND TRACT 3, ACCORDING TO THE FINAL PLAT OF BURLINGAME RANCH AFFORDABLE HOUSING, FILING NO. 1 FINAL SUBDIVISION PLAT - SECOND AMENDMENT AS RECORDED AS RECEPTION NO. 598456 OF THE PITKIN COUNTY RECORDS. SAID EASEMENT SITUATED IN SECTION 2, TOWNSHIP 10 SOUTH, RANGE 85 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARK B; THENCE S.81°25'21\".W ALONG THE SOUTHERLY BOUNDARY AND SOUTHERLY BOUNDARY LINE EXTENDED OF SAID PARK B, A DISTANCE OF 90.91 FEET; THENCE LEAVING SAIDSOUTHERLY BOUNDARY AND SOUTHERLY BOUNDARY LINE EXTENDED S.7°21'19\".E, A DISTANCE OF 70.33 FEET; THENCE S.82°38'41\".W, A DISTANCE OF 20.00 FEET; THENCE N.7°21'19\".W, A DISTANCE OF 89.91 FEET; THENCE N.81°25'21\".E, A DISTANCE OF 111.53 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY MINING STOCK PARKWAY; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY 20.04 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 192.50 FEET AND A CENTRAL ANGLE OF 5°35'43\" WITH A CHORD BEARING OF S.5°57'49\".E FOR A DISTANCE OF 20.03 FEET, TO THE POINT OF BEGINNING. SAID SANITARY SEWER EASEMENT CONTAINING 0,000 SQUARE FEET, MORE OR LESS.

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311 SOPRISENG@SOPRISENG.COM

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

LINE EXTENSION MODIFICATION AGREEMENT

THIS LINE EXTENSION MODIFICATION AGREEMENT is made and entered into this 2nd day of October, 2019, by and between the **ASPEN CONSOLIDATED SANITATION DISTRICT**, a quasi-municipal corporation of Pitkin County, Colorado (hereinafter “the **District**”), and the **CITY OF ASPEN**, a municipal corporation of the State of Colorado (hereinafter “**Developer**”) (both entities together hereinafter collectively referred to as the “**Parties**”).

RECITALS:

A. Developer is the owner of certain real property located within the District to be developed as an affordable housing project, known as **Burlingame Ranch Phase 3**, (hereinafter the “**Project**”).

B. District is the owner of an existing wastewater collection and treatment system providing wastewater collection and treatment services to all property owners within the District.

C. Developer desires to complete improvements to a park known as “Park 2,” part of Burlingame Ranch Phase 2a project, prior to development of the Project.

D. Developer has designed a sanitary sewer line extension, approved by the District, to serve “Building 8” of the Project, which if constructed in its current planned location beneath Park 2, would require destruction of park improvements, should the designed sanitary sewer line extension (“Line Extension”) be installed at a future date.

E. Developer desires to redesign, construct and install said Line Extension using a different alignment, so as to serve Building 8 of the Project prior to the Project’s final approval, which realignment allows completion of improvements to Park 2.

F. District agrees to allow Developer to redesign, construct and install said Line Extension using a different alignment, upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of these premises and the promises of each of the Parties as set forth below, it is agreed:

1. Developer’s Obligations.

a. Developer agrees to pay the District all reasonable expenses incurred by District in retaining District Engineer, District Counsel, and such other professionals to be retained by the District in performing work related to redesign, construction and installation of the Line Extension and review and acceptance thereof by the District. Throughout the term of this Agreement, prior to the first day of each calendar quarter, Developer shall provide the District with a schedule of work for the upcoming calendar quarter.

b. Developer shall be responsible for preparation, at Developer’s expense, of designs and cost estimates of the Line Extension for the Project. Developer shall reimburse the District a sum of money determined by the District, as payment for review of the designs and cost estimates by the District Engineer.

c. Developer shall notify or advise, in writing, all necessary local, state, and federal agencies with jurisdiction over the Project that Developer has submitted designs for the Line Extension.

d. Following review of the designs and cost estimates, Developer shall prepare final designs, based upon suggested changes, if any, from the District Engineer. The set of final design plan documents and final cost estimates shall be delivered to the District Engineer at least thirty (30) days prior to the award of any contract for construction and installation of the Line Extension.

e. Developer shall use only the District pre-qualified contractors for construction and installation of the Line Extension. If Developer desires to use a non-qualified contractor, Developer may submit to the District Manager, a District pre-qualification form and a written resume listing the contractor's qualifications to the District Manager for review. The District, in its sole and absolute discretion, shall make a determination of the contractor's qualifications within thirty (30) working days after receipt of the contractor's resume and references and provide written notice of such determination to the Developer.

f. Developer and its contractor shall be responsible for securing any and all necessary permits and approvals for construction of the Line Extension. The District agrees to cooperate with Developer in obtaining all necessary permits and approvals described in the preceding sentence. Any and all costs incurred by the District as a result of such cooperation shall be reimbursed to the District by the Developer in accordance with the terms of this Agreement. Developer and contractor shall be responsible for insuring all work is done in compliance with District rules, regulations, specifications, local ordinances, and state and federal laws, and insuring that such construction work is completed in a timely fashion.

g. Developer and its contractor shall provide District with a detailed construction schedule for all work to be performed and shall meet regularly with the District, or its Engineer to discuss progress of the work, schedule construction observation by the District, or its Engineer, and keep District, or its Engineer informed as to the occurrence of any problems with construction of the Line Extension or deviation from the approved construction plans. Within five (5) days of an award of contract, Developer shall notify District, in writing, of the cost of the contract for installation of the Line Extension.

h. It is mutually acknowledged and understood that Developer shall be solely responsible for all means and methods of construction employed in constructing and installing the Line Extension in accordance with the final design plans and specifications approved by the District Engineer.

i. Developer and its contractor shall provide all statutorily-required performance, payment and warranty bonds for all work contemplated by this Agreement, except to the extent that Developer can establish, to the satisfaction of the District, that such construction work or any portion thereof is covered by a cash escrow agreement with Developer, Colorado, a copy of which shall be provided to the District, the terms of which agreement, by addenda or otherwise, permit the District to use such cash escrow or any portion thereof, to complete all construction work upon the Line Extension and appurtenances thereto, as intended by this Agreement.

j. All required performance payment and warranty bonds shall ensure that the construction of the Line Extension was completed in full accordance with all applicable local and District specifications, and shall warrant and guarantee the construction work on the Line Extension for a period of two (2) years following **conditional acceptance** by the District, as well as insuring that all labor and materials used in such construction work have been paid for in full.

k. Upon completion of the Line Extension and prior to the District issuing notice of “Conditional Acceptance” initiating Developer’s **two-year warranty period**, the Developer shall:

- (1) provide evidence of satisfactory completion of testing of all manholes and appurtenances thereto;
- (2) provide the District with copies of all other applicable tests performed including, without limitation, copies of any and all compaction tests required by approved plans or as required by the District Engineer;
- (3) provide evidence that all final grade adjustments required by the approved plans or requested by District Engineer have been accomplished;
- (4) secure televising and videotaping (CCTV) of the Line Extension, at Developer’s expense, through the District;
- (5) complete all Project Contract “punch list” items;
- (6) provide one (1) full set of preliminary “as-built” drawings for all work completed on the Project.

Upon provision of the above items by Developer, and written notice thereof to the District, the work shall be deemed “conditionally accepted,” commencing the **two-year warranty period**; it being acknowledged and understood such Conditional Acceptance of the Line Extension shall not begin until any and all line extensions contemplated or required to serve the Project are completed, at which time, the District shall inspect the Line Extension and, if acceptable, shall include the Line Extension with all other line extensions installed to serve the Project in accordance with the contemplated, required Collection System Agreement for Project.

l. Upon completion of the **two-year warranty period**, the District Engineer shall issue “Notice of Final Acceptance” of the Line Extension for conveyance of ownership and perpetual maintenance and repair responsibilities to the District, provided the following has been completed:

- (1) submission to the District of fully executed documents, as approved by District legal counsel, conveying to the District all right, title and interest in and to the Line Extension and all appurtenances thereto, except, however, for those segments deemed the “pressure system,” if any. Title to such system, as well as perpetual maintenance, repair, and replacement responsibility for such pressure system shall remain with Developer and its successors;
- (2) provision of evidence, acceptable to the District, that title to all personal property to be conveyed is free from any and all liens and encumbrances, including, without limitation, proper lien releases;
- (3) submission to the District of fully executed, final amended plat or appropriate perpetual easement documents containing dedication and conveyance language, using standard District formats, satisfactory to the District, giving the District the right to gain access to and the right to install, maintain, repair and replace any or all of the Line Extension and the right to use portions of the Project or such adjacent real property, as is reasonably necessary to conduct the business of the District;

(4) provision of evidence acceptable to the District that such easements or other property rights will not be adversely affected by superior liens, mortgages, or other encumbrances;

(5) completion of a second televising and videotaping of the Line Extension, to be performed at Developer's expense, by the District, before the end of the two-year warranty period;

(6) assignment to the District of any and all manufacturers' warranties for parts and materials used in construction of the Line Extension;

(7) provision of a set of final "as-built" drawings or "record" drawings, consisting of at least one mylar and two blue-line drawings, all of which shall bear the seal of a Registered Professional Engineer licensed in the State of Colorado and a GIS survey of the line in place to be performed by the District, all at Developer's cost;

(8) final completion of all work items, including surface improvements and manholes.

m. During the course of work on the Project and, if necessary, during the two-year warranty period, the Developer shall maintain and repair all temporary sewer lines and appurtenances thereto, required by construction, maintenance or repair of the Project.

2. District's Obligations.

a. District agrees to retain and make available for plan review, construction observation, document review, and approval, a Professional Engineer who is familiar with and shall act in accordance with the District's rules, regulations, specifications, and requirements of wastewater collection systems (hereinafter "District Engineer"). District shall also retain and make available for review and consultation, its legal counsel ("District Counsel"), together with such other professionals as may be necessary to complete work on the collection system Project, pursuant to the terms of this Agreement.

b. District agrees to perform all reviews and issue all approvals required under this Agreement in a reasonable and timely fashion.

c. District shall maintain all monies paid by Developer pursuant to the terms of this Agreement in an interest-bearing District account. District reserves the right to prepare a final accounting of construction costs, District Engineer's fees, and District Counsel fees, together with a final accounting of all rates, fees, tolls, and charges imposed by the District, based upon the actual costs incurred by the District and the final configuration of the Line Extension for the Project. If the actual amount of funds determined by the District to be due and owing from the Developer exceeds the amount previously paid by Developer hereunder, District shall bill Developer for the difference and Developer agrees to pay District said amount within thirty (30) days of receipt of such bill. Any and all amounts of rates, fees, tolls, or charges imposed by the District pursuant to this Agreement which remain unpaid by Developer or its successors after thirty (30) days following receipt of a bill therefor shall be deemed a superior perpetual lien upon all future Developer wastewater services. In no instance, shall the Developer be relieved of any obligation to pay the District in full for uncollected rates, fees, tolls and charges, together with penalties and interest thereon. In addition, the District reserves any and all rights it may have to disconnect or otherwise block wastewater collection service from the Developer's property served by this Project.

If the actual amount of funds determined by the District to be due and owing from the Developer is less than the amount previously paid by Developer hereunder, the District shall reimburse the Developer for the difference, within thirty (30) days of issuance of final acceptance.

It is mutually acknowledged the amount of funds determined by the District to be due and owing to the District from the Developer pursuant to this Agreement, throughout the performance of this Agreement, are ESTIMATES ONLY.

d. Neither the District nor the Developer shall be responsible or deemed to be in default under this Agreement on account of delays in the performance of this Agreement due to causes beyond the District's or Developer's control, as the case may be, and not occasioned by their fault or negligence, including, but not limited to, fires, floods, explosions, earthquakes; serious accidents of third Parties; strikes, riots, or insurrections; irreparable damage to sewer lines; any act of any government, governmental priorities, acts of God, or other public entity; failure of transportation; quarantine restrictions; or labor troubles causing cessation, slow-downs or interruptions of work provided any and all costs are beyond the District's or Developer's control, as the case may be. Any Party invoking the provisions of this subparagraph (d) shall provide appropriate notice, per paragraph 10 below, to the other Party.

3. Service Connections.

a. If so required by circumstances, the Developer shall install all individual service connections to the Collection System within the Project in accordance with the District's rules and regulations in effect at the time such connections are made. Total collection fees or other rates, fees, tolls, and charges of the District for such individual connections shall be paid in a manner prescribed by the District's rules and regulations.

b. Developer shall have the right to install "stub-outs" for service connections to any or all lots in the Project, at Developer's expense. Prior to the time of installation of any stub-out, Developer, for itself or acting on behalf of potential, future users, shall pay to the District forty percent (40%) of the estimated current total connection fee then in effect, for that particular lot, known hereinafter as the "stub-out fee."

c. When stub-outs are installed, Developer's engineer shall be responsible for establishing both the stub-out connection point and the point marking the end of the stub-out, with surveyed tie-ins for both points with two (2) swing ties from the nearest permanent feature such as a manhole or fire hydrant. The service line stub-out shall be extended to the individual parcel to be served, laid at the proper legal grade to a point identified by the approved plans, and extended above the surface of the ground and capped for future testing and location. The location of all stub-outs shall be field confirmed with the District's Engineer prior to covering any such stub-out, and all information relating to the survey tie-ins of the above-referenced stub-out points shall be preserved in plan form on a separate mylar, to be provided to the District within ninety (90) days of installation of said stub-out.

If Developer for itself or acting on behalf of potential, future users, elect not to use a previously installed stub-out:

(1) the existing stub-out shall be excavated and capped off at the District's main, at Developer's or its successor's expense; if this task is not accomplished, the District shall have the right to perform this work, at Developer's or its successor's expense and bill Developer or its successor for such work; and

(2) Developer for itself or acting on behalf of potential, future users, shall lose the credit of the forty percent (40%) total connection charges previously paid and shall pay for a new total connection charge for the residence or other structure not utilizing previously installed stub-outs, at the rate in effect at the time the tap is to be made.

d. In all other situations, a total connection fee due for any lot shall not be capped or fixed and the balance shall be computed in accordance with District rules and regulations and total connection fee rates in effect at the time the balance of such fee is paid.

4. Oversizing.

a. It is mutually acknowledged and understood that Developer shall be responsible for the cost of installing 8-inch internal diameter main collection lines within the Project's Line Extension.

b. For any portion of the Line Extension, which District, in its sole discretion, requires a larger size pipe, the District shall reimburse or otherwise pay the Developer for the difference in cost between an 8-inch pipe-size and the desired larger diameter pipe-size. Reimbursable costs shall be for the material costs of the pipe only, which costs shall be derived from at least three competitive bids. Written proof of bids and a statement for the actual cost of the oversized pipe installed shall be provided to the District prior to the District becoming responsible for any oversizing payments hereunder. The District shall have a reasonable time not to exceed thirty (30) days within which to make payments, properly billed, hereunder.

5. System Impacts. The Parties hereto mutually acknowledge construction of the Collection System for the Project may have impacts upon the District's existing public sanitary wastewater collection system, such impacts shall be addressed by Developer depositing funds in an account with the District on a proportionate basis, if determined necessary in the sole discretion of the District.

6. District's Estimates. It is mutually acknowledged the amount of funds determined by the District to be due and owing to the District from the Developer pursuant to this Agreement, throughout the performance of the Agreement are "*made in good faith.*"

7. Status of Accounts. For all accounts established and maintained by the District pursuant to this Agreement, *if any*, the District agrees to provide Developer with account statements, showing the status of the funds maintained in said accounts. The Parties mutually acknowledge the District is a governmental entity and therefore its financial statements are subject to the statutory requirement of an annual audit. The District covenants that it will direct its auditors, on an annual basis, to specifically address the status of all such accounts by means of a detailed note to the District's annual audit report.

8. Rules and Regulations. Except to the extent that terms of this Agreement are inconsistent therewith, in which case the terms of this Agreement shall be deemed controlling, any and all provisions of the District's rules, regulations, and specifications regarding installation of the Collection System, District System Improvements connection thereto, and use thereof shall apply to the Developer, and its agents, independent contractors, related Parties, successors and assigns.

9. **Insurance.** The Developer or its contractors and subcontractors shall provide the types and amounts of liability insurance not less than the following:

- a. Worker's Compensation: Statutory
- b. Employer's General Liability: \$2,000,000.00, each person
- c. Comprehensive General Liability:
 - (i) Bodily Injury: \$1,000,000.00, each person
\$2,000,000.00, each occurrence
 - (ii) Property Damage: \$1,000,000.00, each occurrence
\$2,000,000.00, annual aggregate
- d. Comprehensive Automobile Liability:
 - (i) Bodily Injury: \$1,000,000.00, each person
\$2,000,000.00, each occurrence
 - (ii) Property Damage: \$1,000,000.00, each occurrence
\$2,000,000.00, annual aggregate
- e. Excess (Umbrella) Liability Coverage: \$3,000,000.00

Notwithstanding any of the language of the Agreement to the contrary, any and all insurance policies required by the Agreement shall be "*occurrence basis*" policies, and each shall name the District as an ***"additional insured."***

10. **Miscellaneous.**

a. **Relationship of the Parties.** By entering into this Agreement, the Parties are not creating, and shall not be deemed or construed as creating a joint venture, partnership, authority, or any other type of legal relationship, and each Party shall remain a separate and distinct entity for all purposes under this Agreement. Neither the fact of the existence of this Agreement nor the Parties' performance of this Agreement shall in any manner alter either Party's statutory and common law rights, powers, duties, and authorities, except to the extent expressly set forth in this Agreement.

b. **Headings and Captions.** The headings and captions used in this Agreement are for the convenience of reference only and do not form a part of this Agreement.

c. **No Third Party Rights.** This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a Party to this Agreement, expressly including enforcement of any of the terms and conditions of this Agreement; all rights of action relating to such enforcement shall be strictly reserved to the Parties.

d. **Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronically by PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

e. **Assignment.** This Agreement shall not be assignable by either Party hereto without the prior written consent of the other Party. This Agreement may only be assigned in whole and not in part. Any purported assignment in violation of the foregoing shall be void.

f. **Successors and Assigns.** This Agreement, including, without limitation, all such terms and conditions hereof as survive termination, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns, heirs, personal

representatives and any entities resulting from reorganization, consolidation or merger of any Party hereto.

g. Severability. If any covenant, term, condition or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

h. Non-Waiver. No waiver of any breach of any one or more of the conditions or covenants in this Agreement and no waiver of any condition or covenant in this Agreement by any Party shall be deemed to imply or constitute a further waiver of any other like breach or condition or covenant. No waiver shall be effective unless evidenced by a writing.

i. Survival. All of the terms and conditions of this Agreement concerning indemnification, termination, remedies and enforcement of executory provisions or payments due and owing hereunder, shall survive termination of this Agreement.

j. Governmental Immunity. Nothing contained herein shall be deemed or construed as a waiver or is intended to waive any protections which may be applicable to the Developer or the District or their respective officers and employees under the Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or any other rights, protections, immunities, defenses or limitations on liability provided by law, and subject to any applicable provision of the Colorado Constitution and applicable laws.

k. Counterparts. This Agreement may be executed in counterparts and by facsimile or electronically by PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

l. Merger/Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties herein with respect to the transactions contemplated hereunder and any and all prior agreements, written or oral, are merged herein. This Agreement may be altered and amended from time to time, only by a written instrument executed by each of the Parties hereto.

m. Effective Date. This Agreement is effective as of the date the latter of which Party signs this Agreement.

n. Legal Compliance. In performing the terms of this Agreement, the Parties shall comply fully with all applicable federal, state, and local laws, rules, regulations, ordinances, resolutions, or operating procedures.

o. Dispute Resolution. In the event of any action for breach of or to enforce the provisions of, or otherwise involving any and all disputes or claims arising under or relating to this Agreement shall be submitted first to mediation. The Parties shall share equally the mediator's fees and costs associated with the mediation and each Party shall pay its own attorneys' fees, costs, and expenses related to the mediation. If the dispute is not resolved by mediation, either Party may commence a Court proceeding, with jurisdiction and venue lying exclusively in the District Court for the County of Pitkin, State of Colorado. Each Party waives its right to have such dispute decided by a jury trial. The prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, expert witness fees and other reasonable expenses incurred in collecting or executing upon any judgment, order or award.

p. Parties' Warranties. The Parties hereby represent and warrant that all actions necessary to authorize execution of this Agreement, have been taken by each Party and that the person executing this Agreement on behalf of each Party, is duly authorized to do so and bind each Party to all of the terms, conditions and covenants contained herein.

q. Further Acts. Each of the Parties agree to execute, acknowledge and deliver such further instruments, documents or certificates and do all things and acts as the other Party may reasonably require in order to carry out the intention of this Agreement and the transactions contemplated hereby. If this Agreement is terminated by any actions of the Parties, any and all executory obligations of either Party shall remain in full force and effect.

11. Notices. All notices, requests, and other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery thereof, by hand, to the appropriate addresses hereinafter set forth, as evidenced by a signed receipt for same, or as of the second business day after mailing, by United States Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

(a) To Developer:

**City of Aspen
130 South Galena Street
Aspen, CO 81611**

(b) To District:

**ASPEN CONSOLIDATED SANITATION DISTRICT
565 N. Mill St.
Aspen, CO 81611**

With a copy to:

**Robert Tibbals, Jr., Esq.
P.O. Box 3112
Englewood, Co 80155**

12. Release Upon Assignment/Transfer. In the event Developer assigns or transfers its interest in the Project prior to the completion of all the work referred to above, Developer shall provide written notice to the District thereof and be forever and finally released and discharged from any further liability or obligation under this Agreement and the District agrees to look solely to the assignee for the performance of all covenants, obligations, terms and conditions and for any breach thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

Aspen Consolidated Sanitation District

Attest:

By: _____
Title:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

Subscribed to and sworn before me this ____ day of _____, 2019, by
_____, as Chairman and _____,
as Secretary of the Aspen Consolidated Sanitation District.

[S E A L]

Notary Public

My Commission expires: _____

Developer: City of Aspen

Attest:

By: _____
Title:

Title: City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

Subscribed to and sworn before me this ____ day of _____, 2019, by
_____, as _____ and
_____, as City Clerk of **City of Aspen**.

[S E A L]

Notary Public

My Commission expires: _____

MEMORANDUM

TO: Mayor and City Council

FROM: Chris Everson, Affordable Housing Project Manager

THROUGH: Scott Miller, Public Works Director

MEMO DATE: September 30, 2019

MEETING DATE: October 8, 2019

RE: Resolution #104 of 2019 - Purchase Contract for Aspen Mini Storage Property

REQUEST OF COUNCIL: Staff is requesting approval of Resolution #104 of 2019 and attached contract to purchase property located at 105 Aspen Airport Business Center otherwise known as Aspen Mini-Storage.

SUMMARY AND BACKGROUND: Staff has been working with the agent for the owners of the 3-acre Aspen Mini Storage property adjacent to the City's lumberyard property near the Aspen Airport Business Center. Attached is a contract to purchase the property for a purchase price of \$11 million.

The attached purchase contract has been signed by City Manager, Sara Ott, and contains terms which state that the contract automatically terminates if notice of approval by Aspen City Council is not provided on or before 31 days after the contract was signed on September 23, 2019.

In the contract, the City has the ability to terminate the contract and have \$550,000 in earnest money returned pending numerous contingencies such as title objection, appraisal, environmental, inspection and other contingencies. Staff is currently commissioning an appraisal and an environmental site assessment along with additional due diligence. The seller is also providing due diligence items required under the contract. Closing is currently scheduled for February 20, 2020.

DISCUSSION: The 3-acre Aspen Mini Storage property is located within the urban growth boundary but outside City limits. The property is immediately north of the City's lumber yard property and could provide valuable through access from the lumber yard property to the AABC. The property meets the criteria for annexation into the City of Aspen.

Inclusion of this property in the planning and design for the City's lumberyard housing development will allow the City to better alleviate concerns related to the CDOT Access Control Plan and concerns heard during the community outreach process about adjacency to the AABC. The addition of this parcel to the project increases the developable area of the site to nearly 10 acres and will allow for more planning flexibility.

Because the effort is still in the early stages of the project planning, it is not possible to know at this time what amount of affordable housing density will be located on the Aspen Mini Storage property

or if including the Aspen Mini Storage property in the project will instead allow for more appropriate handling of circulation, parking and/or other concerns thus freeing up space for additional housing units to be located on the balance of the site.

Staff plans to update the scope of work for the lumberyard community outreach and conceptual design effort to include this property and to seek participants in a series of stakeholder round table discussions on how to appropriately plan the addition of this property into the overall affordable housing development plan for this site.



FINANCIAL/BUDGET IMPACTS: Funds for purchasing this property are available from the 150 Housing Development fund. Staff plans to include a discussion on the potential use of financing during the upcoming budget work session on October 14, 2019.

The contract price, which is pending appraisal, was based on an analysis by the staff and also by the City's real estate broker which was based on nearby comps and on the price paid by the City for other land purchases in years past as well as based on cash flows for the existing Aspen Mini Storage business, which is relevant to establish how the open market would value this property. It is also of note that the adjacent property to the east at 205 Aspen Airport Business Center is currently being developed as a commercial storage facility.



Staff plans to manage the ongoing operation of the Aspen Mini Storage tenant leases on the same schedule as the existing lease at the lumberyard property. The monthly revenues from the tenant leases are approximately \$60,000 per month.

ENVIRONMENTAL IMPACTS: A Phase I ESA is in process.

ALTERNATIVES: Council could choose to table approval of Resolution 104 of 2019 for further discussion at the October 22, 2019 regular meeting and still maintain the contract timeline.

RECOMMENDATIONS: Staff recommends approval of Resolution 104 of 2019 and attached contract to purchase property located at 105 Aspen Airport Business Center otherwise known as Aspen Mini-Storage.

CITY MANAGER COMMENTS: _____

ATTACHMENTS: Exhibit A - Contract to purchase property located at 105 Aspen Airport Business Center otherwise known as Aspen Mini-Storage.

RESOLUTION #104
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AUTHORIZING SUPPLEMENTAL BUDGET AUTHORITY AND APPROVING A CONTRACT TO PURCHASE PROPERTY LOCATED AT 105 ASPEN AIRPORT BUSINESS CENTER OTHERWISE KNOWN AS ASPEN MINI-STORAGE ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract to purchase property located at 105 Aspen Airport Business Center otherwise known as Aspen Mini-Storage, 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 2019 supplemental budget amount of \$550,000 from the City’s 150 Housing Development Fund for earnest monies paid and the contract to purchase property located at 105 Aspen Airport Business Center otherwise known as Aspen Mini-Storage, a copy of which is annexed hereto and incorporated herein.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 8th day of October, 2019.

Torre, 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 October 8, 2019.

Linda Manning, City Clerk

Aspen Snowmass Sotheby's International Realty
415 East Hyman Avenue Aspen, CO 81611
Andrew Ernemann andrew.ernemann@sothebysrealty.com
Ph: 970-379-8125 Fax: 888-550-2881

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.(CBS3-5-19) (Mandatory 7-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE
(COMMERCIAL)

☐ Property with No Residences)
☒ Property with Residences-Residential Addendum Attached)

Date: 9/20/2019

AGREEMENT

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, City of Aspen (Buyer) will take title to the Property described below as
☐ Joint Tenants ☐ Tenants In Common ☒ Other TBD.

2.2. No Assignability. This Contract IS NOT assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. Seller. Aspen Mini-Storage, LLC (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Pitkin, Colorado:
COMMUNICATION CENTER Lot: 3
known as No. 105 Aspen Airport Business Center, Aspen, CO 81611,
together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):
2.5.1. Inclusions - Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under Exclusions: lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories) and garage door openers (including any remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under Due Diligence Documents): ☐ None ☐ Solar Panels ☐ Water Softeners ☒ Security Systems ☐ Satellite Systems (including satellite dishes). If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Inclusions - Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under Exclusions: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

2.5.3. Personal Property - Conveyance. Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A.

Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.5.4. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price: Those appurtenant to the Property including all owner/tenant improvements and fixtures.

2.5.5. Parking and Storage Facilities. The use or ownership of the following parking facilities: those appurtenant to the Property; and the use or ownership of the following storage facilities: those appurtenant to the Property.

Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

2.5.6. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows: .

The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except . Conveyance will be by bill of sale or other applicable legal instrument.

2.6. Exclusions. The following items are excluded (Exclusions): None

2.7. Water Rights/Well Rights.

☐

2.7.1. Deeded Water Rights. The following legally described water rights:

N/A

Any deeded water rights will be conveyed by a good and sufficient deed at Closing.

☐

2.7.2. Other Rights Relating to Water. The following rights relating to water not included in §§ 2.7.1, 2.7.3, and 2.7.4, will be transferred to Buyer at Closing: N/A

☐

2.7.3. Well Rights. Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is N/A.

☐

2.7.4. Water Stock Certificates. The water stock certificates to be transferred at Closing are as follows: N/A

2.7.5. Conveyance. If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

3. DATES, DEADLINES AND APPLICABILITY.

3.1 Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	3 business days after MEC
Title			
2	§ 8.1, § 8.4	Record Title Deadline	14 days after MEC
3	§ 8.2, § 8.4	Record Title Objection Deadline	120 days after MEC
4	§ 8.3	Off-Record Title Deadline	14 days after MEC
5	§ 8.3	Off-Record Title Objection Deadline	120 days after MEC
6	§ 8.5	Title Resolution Deadline	125 days after MEC
7	§ 8.6	Right of First Refusal Deadline	

		Owners' Association		
8	\$ 7.2	Association Documents Deadline	14 days after MEC	
9	\$ 7.4	Association Documents Termination Deadline	120 days after MEC	
		Seller's Disclosures		
10	\$ 10.1	Seller's Property Disclosure Deadline	30 days after MEC	
11	\$ 10.10	Lead-Based Paint Disclosure Deadline		
		Loan and Credit		
12	\$ 5.1	New Loan Application Deadline		
13	\$ 5.2	New Loan Termination Deadline		
14	\$ 5.3	Buyer's Credit Information Deadline		
15	\$ 5.3	Disapproval of Buyer's Credit Information Deadline		
16	\$ 5.4	Existing Loan Deadline		
17	\$ 5.4	Existing Loan Termination Deadline		
18	\$ 5.4	Loan Transfer Approval Deadline		
19	\$ 4.7	Seller or Private Financing Deadline		
		Appraisal		
20	\$ 6.2	Appraisal Deadline	120 days after MEC	
21	\$ 6.2	Appraisal Objection Deadline	120 days after MEC	
22	\$ 6.2	Appraisal Resolution Deadline	125 days after MEC	
		Survey		
23	\$ 9.1	New ILC or New Survey Deadline	21 days after MEC	
24	\$ 9.3	New ILC or New Survey Objection Deadline	120 days after MEC	
25	\$ 9.3	New ILC or New Survey Resolution Deadline	125 days after MEC	
		Inspection and Due Diligence		
26	\$ 10.3	Inspection Objection Deadline	120 days after MEC	
27	\$ 10.3	Inspection Termination Deadline	120 days after MEC	
28	\$ 10.3	Inspection Resolution Deadline	125 days after MEC	
29	\$ 10.5	Property Insurance Termination Deadline	120 days after MEC	
30	\$ 10.6	Due Diligence Documents Delivery Deadline	30 days after MEC	
31	\$ 10.6	Due Diligence Documents Objection Deadline	120 days after MEC	
32	\$ 10.6	Due Diligence Documents Resolution Deadline	125 days after MEC	
33	\$ 10.6	Environmental Inspection Termination Deadline	120 days after MEC	
34	\$ 10.6	ADA Evaluation Termination Deadline	120 days after MEC	
35	\$ 10.7	Conditional Sale Deadline		
36	\$ 10.10	Lead-Based Paint Termination Deadline		
37	\$ 11.1, 11.2	Estoppel Statements Deadline	30 days after MEC	
38	\$ 11.3	Estoppel Statements Termination Deadline	120 day after MEC	
		Closing and Possession		
39	\$ 12.3	Closing Date	150 days after MEC	
40	\$ 17	Possession Date	Closing Date	
41	\$ 17	Possession Time	After Closing and Funding	
39	\$ 28	Acceptance Deadline Date	9/23/2019	Monday
42	\$ 28	Acceptance Deadline Time	5:00 PM MDT	
43				
44				

3.2. Applicability of Terms. Any box checked in this Contract means the corresponding provision applies. If any deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$11,000,000.00	
2	§ 4.3	Earnest Money		\$550,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7				
8				
9	§ 4.4	Cash at Closing		\$10,450,000.00
10		TOTAL	\$11,000,000.00	\$11,000,000.00

4.2. Seller Concession. At Closing, Seller will credit to Buyer \$ N/A (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

4.3. Earnest Money. The Earnest Money set forth in this Section, in the form of a Good Funds, will be payable to and held by Pitkin County Title - Aspen (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

4.3.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

4.3.2. Return of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.

4.4. Form of Funds; Time of Payment; Available Funds.

4.4.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.4.2. Time of Payment; Available Funds. All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.5. New Loan. (Omitted as inapplicable)

4.6. Assumption. (Omitted as inapplicable)

4.7. Seller or Private Financing. (Omitted as inapplicable)

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS. (Omitted as inapplicable)

5.3. Credit Information and Buyer's New Senior Loan. (Omitted as inapplicable)

5.4. Existing Loan Review. (Omitted as inapplicable)

6. APPRAISAL PROVISIONS.

6.1. Appraisal Definition. An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

6.2. Appraisal Condition. The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

6.2.1. Conventional/Other. Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**:

6.2.1.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

6.2.1.2. Appraisal Objection. Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

6.2.1.3. Appraisal Resolution. If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

6.3. Lender Property Requirements. If the lender imposes any written requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in writing by Buyer.

6.4. Cost of Appraisal. Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by ☒ **Buyer** ☐ **Seller**. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

7. OWNERS' ASSOCIATION. This Section is applicable if the Property is located within a Common Interest Community and subject to the declaration (Association).

7.1. Common Interest Community Disclosure. **THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

7.2. Association Documents to Buyer. Seller is obligated to provide to Buyer the Association Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

7.3. Association Documents. Association documents (Association Documents) consist of the following:

7.3.1. All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements, rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

7.3.2. Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings; such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

7.3.3. List of all Association insurance policies as provided in the Association's last Annual Disclosure, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

7.3.4. A list by unit type of the Association's assessments, including both regular and special assessments as disclosed in the Association's last Annual Disclosure;

7.3.5. The Association's most recent financial documents which consist of: (1) the Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the fees and charges (regardless of name of title of such fees or charges) that the Association's community association manager or Association will charge in connection with the Closing including, but not limited to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, Financial Documents);

7.3.6. Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent

Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

8.1. Evidence of Record Title.

☒ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, ☐ an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☐ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price. If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

8.1.3. Owner's Extended Coverage (OEC). The Title Commitment ☒ **Will** ☐ **Will Not** contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by ☐ **Buyer** ☒ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other**.

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title, Resolution).

8.1.4. Title Documents. Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

8.1.5. Copies of Title Documents. Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

8.1.6. Existing Abstracts of Title. Seller must deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

8.2. Record Title. Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or

before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

8.3. Off-Record Title. Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

A tax certificate from the respective county treasurer listing any special taxing districts that effect the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that the Property is included in a special taxing district and is received by Buyer after the **Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to the Property's inclusion in a special taxing district as unsatisfactory to Buyer.

8.5. Right to Object to Title, Resolution. Buyer's right to object, in Buyer's sole subjective discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), § 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

8.5.1. Title Objection, Resolution. If Seller receives Buyer's written notice objecting to any

title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3 (Off-Record Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

8.5.2. Title Objection, Right to Terminate. Buyer may exercise the Right to Terminate under § 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

8.6. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

8.7. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property, and various laws and governmental regulations concerning land use, development and environmental matters.

8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.

8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.7.5. Title Insurance Exclusions. Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.8. Consult an Attorney. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and **Off-Record Title Objection Deadline**).

9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, a: 1) ☐ **New Improvement Location Certificate (New ILC)**; or, 2) ☒ **New Survey** in the form of an ALTA Survey; is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. ☒ Seller ☐ Buyer will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: ☒ Seller ☐ Buyer or:

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and Buyer's attorney will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object to the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

9.3.3. New ILC or New Survey Resolution. If a **New ILC or New Survey Objection** is received by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "**As Is**" condition, "**Where Is**" and "**With All Faults.**"

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is

unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

10.3.1. Inspection Objection. On or before the **Inspection Objection Deadline**, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

10.3.2. Terminate. On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in § 3.1 for Inspection Termination Deadline.**

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence.

10.6.1. Due Diligence Documents. If the respective box is checked, Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

☒ **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;

☒ **10.6.1.2.** Property tax bills for the last 3 years;

☒ **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems, engineering reports, and permanent Certificates of Occupancy, to the extent now available;

☒ **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;

☒ **10.6.1.5.** Operating statements for the past 3 years;

☒ **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;

☒ **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases): **To be provided by Seller**

☒ **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet been completed and capital improvement work either scheduled or in process on the date of this Contract;

☒ **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past 5 years;

☒ **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3);

☒ **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or

underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

☒ **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

☒ **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

☒ **10.6.1.14.** Other documents and information:

Seller shall provide any additional documents reasonably requested by Buyer in their possession.

10.6.2. Due Diligence Documents Review and Objection. Buyer has the right to review and object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

10.6.2.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

10.6.2.2. Due Diligence Documents Objection. Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

10.6.2.3. Due Diligence Documents Resolution. If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**.

10.6.3. Zoning. Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

10.6.4. Due Diligence – Environmental, ADA. Buyer has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ Seller ☒ Buyer will order or provide ☐ **Phase I Environmental Site Assessment**, ☐ **Phase II Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or ☐ , at the expense of ☐ Seller ☒ Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, ☐ Seller ☒ Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Termination Deadline**, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.7. Conditional Upon Sale of Property. This Contract is conditional upon the sale and closing of that certain property owned by Buyer and commonly known as N/A. Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right

to Terminate under this provision.

10.8. Source of Potable Water (Residential Land and Residential Improvements Only).
[Intentionally Deleted]

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. ~~Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.~~

11.1. Estoppel Statements Conditions. Buyer has the right to review and object to any Estoppel Statements. ~~Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on or before Estoppel Statements Deadline, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:~~

11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

11.1.6. That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Seller Estoppel Statements. ~~In the event Seller does not receive from all tenants of the Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents required §11.1 above and deliver the same to Buyer on or before Estoppel Statements Deadline.~~

11.3. Estoppel Statements Termination. Buyer has the Right to Terminate under § 25.1, on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer will cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all customary or reasonably-required documents at or before Closing.

12.2. Closing Instructions. Colorado Real Estate Commission's Closing Instructions ☐ Are ☒ Are Not executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by Title Company.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing:

☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ deed. Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing.

Unless otherwise specified in §30 (Additional Provisions), if title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in §38-30-113(5)(a), C.R.S.

14. PAYMENT OF LIENS AND ENCUMBRANCES. Unless agreed to by Buyer in writing, any amounts owed on any liens or encumbrances securing a monetary sum, including, but not limited to, any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not and previous years' taxes, will be paid at or before Closing by Seller from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing by ☐ Buyer ☐ Seller ☒ One-Half by Buyer and One-Half by Seller ☐ Other

15.3. Status Letter and Record Change Fees. At least fourteen days prior to Closing Date, Seller agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident to the issuance of Association's Status Letter must be paid by ☐ None ☐ Buyer ☒ Seller ☐ One-Half by Buyer and One-Half by Seller. Any Record Change Fee must be paid by ☐ None ☐ Buyer ☒ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.4. Local Transfer Tax. ☐ The Local Transfer Tax of % of the Purchase Price must be paid at Closing by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s): in the total amount of % of the Purchase Price or \$.

15.6. Water Transfer Fees. The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ for:

☐ Water Stock/Certificates ☐ Water District
☐ Augmentation Membership ☐ Small Domestic Water Company ☐ and must be paid at Closing by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller

15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.8. FIRPTA and Colorado Withholding.

15.8.1. FIRPTA. The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller ☐ IS a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

15.8.2. Colorado Withholding. The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

16. PRORATIONS AND ASSOCIATION ASSESSMENT. The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any and general real estate taxes for the year of Closing, based on ☐ **Taxes for the Calendar Year Immediately Preceding Closing** ☒ **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or ☐ **Other**.

16.2. Rents. Rents based on ☒ **Rents Actually Received** ☐ **Accrued**. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions and notify all tenants in writing of such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such Leases.

16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of ☐ **Buyer** ☒ **Seller**. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and . Association Assessments are subject to change as provided in the Governing Documents.

16.4. Other Prorations. Water and sewer charges, propane, interest on continuing loan and **any ongoing services or utilities**.

16.5. Final Settlement. Unless otherwise agreed in writing, these prorations are final.

17. POSSESSION. Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ **1,000.00** per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

GENERAL PROVISIONS

18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings, as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be

delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

19.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this Contract, Buyer and Seller acknowledge that the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

21.1. If Buyer is in Default:

☐ **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such

additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies unless the box in § 21.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

22. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

~~**23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a lawsuit and recording a lis pendens affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.~~

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. ~~The parties reaffirm the obligation of § 23 (Mediation).~~ This Section will survive cancellation or termination of this Contract.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received

hereunder will be returned to Buyer and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, ~~23~~ and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

27. NOTICE, DELIVERY AND CHOICE OF LAW.

27.1. Physical Delivery and Notice. Any document, or notice to Buyer or Seller must be in writing, except as provided in § 27.2 and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

27.2. Electronic Notice. As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or .

27.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, ~~(2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.~~

27.4. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey; and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence and Source of Water.**

ADDITIONAL PROVISIONS AND ATTACHMENTS

30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

A. The language contained in this section has not been approved by the Colorado Real Estate Commission. It was prepared by Aspen Snowmass Sotheby's International Realty.

B. Regarding Paragraph 2.2, No Assignability: This paragraph is hereby deleted. This Contract shall be assignable by Buyer without prior agreement of Seller.

C. Regarding Paragraph 9.1, NEW SURVEY: On or before the New Survey Deadline, Seller shall

provide to Buyer, at Seller's expense, four (4) copies of a current ALTA Survey prepared by a licensed surveyor (the "New Survey") within six (6) months of the date of this Contract. The New Survey shall be certified to Seller, Buyer, the Title Company, and any lender designated by Buyer as reasonably requested by Buyer. The corners of the Property shall be staked and flagged on the day the New Survey is undertaken. Seller shall notify Buyer when the staking has been completed. Buyer shall have until the New Survey Objection Deadline to review and approve the matters revealed by the New Survey. If, on or before the New Survey Objection Deadline, Buyer notifies Seller or Broker in writing of their dissatisfaction regarding the New Survey, and the parties cannot come to an acceptable resolution by the New Survey Resolution Deadline, then this Contract shall be terminated and considered null and void, and any earnest monies paid hereunder and all interest earned thereon shall be immediately returned to the Buyer.

D. Seller shall provide Buyer with a current rent roll prior to the Due Diligence Documents Delivery Deadline.

E. The Seller shall provide the Buyer a template of the lease that each new tenant enters into upon the rental of a unit ("Lease Template") within three (3) days of MEC. Buyer shall have three (3) days to approve the Lease Template which shall be used for all rentals until the Closing Date. Seller shall have the right to enter into new leases using the approved Lease Template until the Closing Date. Buyer shall approve any deviations from the Lease Template within three (3) days of any written request for a deviation by the Seller. Seller shall provide a monthly report to Seller on any change in status of the tenants.

F. The Buyer shall have until thirty (30) days after MEC to obtain Aspen City Council approval of the Contract. In the event the Contract is approved by the Aspen City Council then Buyer shall provide written notice to Seller on or before thirty (31) days after MEC. If the Contract is not approved by Aspen City Council or Buyer does not provide Seller written notice of the approval on or before thirty (31) days after MEC then the Contract shall be considered terminated and all earnest money shall be returned to the Buyer.

G. Seller shall assign all of the existing leases for the storage units and shall make representations and warranties as to the status of each of the leases on the units including providing the information under Section 11.1.1 through 11.1.6.

H. Buyer shall receive a credit for all pre-paid accounts prorated to Closing; Buyer shall credit the Seller 100% for all accounts that are in arrears thirty (30) days or less, and there shall be no credit to the Seller for accounts in arrears greater than thirty (30) days.


I. Any Notice provided by Buyer to Seller under this Contract shall also be required to be provided to Seller's attorneys, Richard A. Knezevich and Sarah M. Oates at the following addresses:

**Oates, Knezevich, Gardenswartz, Kelly & Morrow, P.C. 533 East Hopkins Avenue, Third Floor
Aspen, CO 81611
Phone: 970-920-1700
Fax: 970-920-1121
rak@okglaw.com
smo@okglaw.com**

31. ATTACHMENTS.**31.1.** The following documents are a part of this Contract:**A. Residential Addendum to Contract to Buy and Sell Real Estate****31.2.** The following documents have been provided but are not a part of this Contract:**SIGNATURES**

 Date: 9/23/19
 Buyer: **City of Aspen**
 By: **Sara Ott, City Manager**

[NOTE: If this offer is being countered or rejected, do not sign this document.]

 Date: 9-23-19
 Seller: **Aspen Mini-Storage, LLC**
 By: **Susan V. Clark, Manager**

END OF CONTRACT TO BUY AND SELL REAL ESTATE**32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Buyer)

Broker ☐ Does ☒ **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.


Broker is working with Buyer as a ☐ **Buyer's Agent** ☒ **Transaction-Broker** in this transaction. ☐ This is a **Change of Status**

☐ **Customer.** Broker has no brokerage relationship with Buyer. See § 33 for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by ☐ **Listing Brokerage** ☒ **Buyer** ☐ **Other**.

Brokerage Firm's Name: **Aspen Snowmass Sotheby's International Realty**

Brokerage Firm's License #:

 Date: 9/20/2019
 Broker's Name: **Andrew Ernemann**

Broker's License #: **100028587**

Address: **415 East Hyman Avenue Aspen, CO 81611**

Ph: **970-379-8125** Fax: **888-550-2881** Email Address: **andrew.ernemann@sothebysrealty.com**

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker ☐ Does ☒ Does Not acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Seller as a ☐ Seller's Agent ☒ Transaction-Broker in this transaction. ☐ This is a Change of Status.

☐ Customer. Broker has no brokerage relationship with Seller. See § 32 for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by ☐ Seller ☒ Buyer ☐ Other .

Brokerage Firm's Name: **Aspen Snowmass Sotheby's International Realty**

Brokerage Firm's License #: **EC 100038598**

Broker's
Name:



Date: **9/20/2019**

Broker's License #: **100028587**

Address: **415 East Hyman Avenue Aspen, CO 81611**

Ph: **970-925-6060** Fax: **888-550-2881** Email Address: **andrew.ernemann@sothebysrealty.com**

CBS3-5-19. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

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The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (RA33-10-18) (Mandatory 1-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**RESIDENTIAL ADDENDUM
 TO CONTRACT TO BUY AND SELL REAL ESTATE**

Date: 9/20/2019

1. ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE. This Residential Addendum (Addendum) is made a part of the following contract that is checked:

☐ **Contract to Buy and Sell Real Estate (Land)** between Seller and Buyer (Contract) dated relating to the sale of the Property, or;
☒ **Contract to Buy and Sell Real Estate (Commercial)** between Seller and Buyer (Contract) dated 9/20/2019 relating to the sale of the Property

known as 105 Aspen Airport Business Center, Aspen, CO 81611 (Property).

This Addendum shall control in the event of any conflict with the Contract. Except as modified, all other terms and provisions of the Contract shall remain the same. Terms used herein shall have the same meaning as in the Contract.

2. PURPOSE.

The Property contains, in part, one or more residences but the Contract does not contain required provisions that are set forth in this Addendum. The Contract provisions are added or amended as follows:

4.5.3. Loan Limitations. Buyer may purchase the Property using any of the following types of loan: ☒ **Conventional** ☒ **FHA** ☒ **VA** ☒ **Bond** ☒ **Other** TBD.

4.5.4. Loan Estimate – Monthly Payment and Loan Costs. Buyer is advised to review the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is applying for a residential loan, the lender generally must provide Buyer with a Loan Estimate within three days after Buyer completes a loan application. Buyer also should obtain an estimate of the amount of Buyer's monthly mortgage payment.

6.2.2. FHA. It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the purchaser (Buyer) has been given, in accordance with HUD/FHA or VA requirements, a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised value of the Property of not less than \$. The Purchaser (Buyer) shall have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.

6.2.3. VA. It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The

purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

10.8. Source of Potable Water (Residential Land and Residential Improvements Only). Buyer ☐ Does ☒ Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. Buyer ☐ Does ☐ Does Not acknowledge receipt of a copy of the current well permit. ☒ There is No Well.

Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

10.10. Lead-Based Paint.

10.10.1. Lead-Based Paint Disclosure Unless exempt, if the Property includes one or more residential dwellings constructed or a building permit was issued prior to January 1, 1978, for the benefit of Buyer, Seller and all required real estate licensees must sign and deliver to Buyer a completed Lead-Based Paint Disclosure (Sales) form on or before the **Lead-Based Paint Disclosure Deadline**. If Buyer does not timely receive the Lead-Based Paint Disclosure, Buyer may waive the failure to timely receive the Lead-Based Paint Disclosure, or Buyer may exercise Buyer's Right to Terminate under § 25.1 by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**.

10.10.2. Lead-Based Paint Assessment If Buyer elects to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards, Buyer has a Right to Terminate under § 25.1 by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**. If Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. Buyer may elect to waive Buyer's right to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the condition of the Property relative to any Lead-Based Paint as satisfactory, and Buyer waives any Right to Terminate under this provision.

10.11. Carbon Monoxide Alarms. Note: If the improvements on the Property have a fuel-fired heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code.

10.12. Methamphetamine Disclosure. If Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. Buyer has the Right to Terminate under § 25.1, upon Seller's receipt of Buyer's written Notice to Terminate, notwithstanding any other provision of this Contract, based on Buyer's test results that indicate the Property has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102, C.R.S. Buyer must promptly give written notice to Seller of the results of the test.

19.5 Home Warranty. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.



Buyer: **City of Aspen**

By: Sara Ott, City Manager

Date: 7/8/23/19

Buyer: _____ Date: _____

 _____ Date: 9-23-19
Seller: **Aspen Mini-Storage, LLC**
By: **Susan V. Clark, Manager**

Seller: _____ Date: _____

**(RA33-8-18) (Mandatory 1-19) RESIDENTIAL ADDENDUM TO CONTRACT TO BUY AND SELL
REAL ESTATE**

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MEMORANDUM

TO: City Council
FROM: Richard Pryor
THROUGH: Sara Ott
MEMO DATE: 09/30/2019
MEETING DATE: 10/08/2019
RE: Adoption of Resolution # 105 - Body worn camera contract with Axon Enterprise, Inc of Scottsdale AZ.

REQUEST OF COUNCIL:

This is a request of council to approve Resolution # 105 (attachment "A") adopting a contract for services to provide body worn cameras, sundry equipment and a cloud-based evidence storage and management system (attachment "B").

SUMMARY AND BACKGROUND:

Since 2013 the police department has been testing body camera systems, taking a very cautious approach to implementation due to evolving policy and procedures, and evolutions in technology. Since October 2018 the department has been participating in a department wide free trial of the Axon body camera system and related cloud-based evidence management software.

DISCUSSION:

Police transparency and accountability have been in the public eye to a greater degree than ever due to instances of inappropriate conduct, excessive uses of force, and shooting deaths of community members across the country. In Aspen we are fortunate to have a very highly trained staff of police officers for whom such transgressions are a very rare exception or have never occurred. However, given the world-wide reach of Aspen incidents, the benefits of increased evidence collection and the expectation our community has for a high level of transparency, the body worn camera program will provide several benefits.

- Increased risk management – Both the public and officers tend to behave better when on camera, helping to deescalate situations.
- Good work is validated – video can be used as a training tool
- Case enhancement – increased opportunity to capture evidentiary details at a crime scene or comments and statements made to an officer.
- Accountability – when the community has a question regarding our performance, we may be better able to show an officer perspective.

Some elements of the program that can be seen to be unfavorable are the following:

- Perceptions from both public and officers that cameras can intrude on privacy

- The availability (subject to retention schedules) of video as a public record.
- The amount of administrative time to manage the data.

Aspen community citizen survey data from 2015 and 2016 showed that 73% of respondents either somewhat or strongly supported implementing body cameras with perceptions that the cameras would provide objectivity, reduce conflict and improve safety. An internal Aspen police survey of staff showed that officers felt the cameras were somewhat or very useful, felt comfortable using the cameras, but didn't necessarily feel they made a difference to relationships with the public.

A note should be made that the cloud based "evidence.com" system will be used for all digital media storage and management as well as body camera video. This system allows for a far easier connection to the District Attorney's office for "discovery" of digital media related to criminal cases. The body camera and evidence.com systems do not require IT department support.

The contract includes equipment replacement and system support.

FINANCIAL IMPACTS:

- Funding for this equipment and hosting will be absorbed within existing expenditure authority. With recognition of moving forward with the Evidence and Records Specialist position being funded via departmental savings, ~\$42,000 in annual temporary and overtime labor resources can be reallocated to this contract expense without an increase to the overall budget.

ENVIRONMENTAL IMPACTS:

There are minimal environmental impacts. The cameras are rechargeable.

ALTERNATIVES:

- Council could choose not to approve this contract and the department would relinquish its cameras. A lesser fee would be due to maintain the "evidence.com" system while transferring data to an alternate and yet unresearched platform.
- Council could authorize spending fewer dollars on fewer cameras, to provide for only front-line response coverage.

RECOMMENDATIONS:

Approve Resolution # 105 adopting the body worn camera contract with Axon Enterprise, Inc of Scottsdale AZ.

CITY MANAGER COMMENTS:

RESOLUTION # 105
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,
APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND AXON
ENTERPRISE, INC OF SCOTTSDALE, AZ.

WHEREAS, there has been submitted to the City Council a contract for Body Worn Camera and Evidence.com equipment and services, a contract between the City of Aspen and Axon Enterprise Inc., of Scottsdale, AZ, 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 Resolution # 105 adopting the contract for Body Worn Camera and Evidence.com equipment and services, a contract between the City of Aspen and Axon Enterprise Inc., of Scottsdale, AZ, a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager, Sara Ott, to execute said agreement on behalf of the Aspen/Pitkin County Housing Authority and the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on
the ____ day of _____ 2019.

Torre, 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, _____ 2019.

Linda Manning, City Clerk



CITY OF ASPEN STANDARD FORM OF AGREEMENT

SUPPLY PROCUREMENT

City of Aspen Project No.: 2019-095.

AGREEMENT made as of 30th day of August, in the year 2019.

BETWEEN the City:

The City of Aspen
c/o Aspen Police Department
130 South Galena Street
Aspen, Colorado 81611
Phone: (970) 920-5055

Contract Amount:

Total: \$191,391.50

And the Vendor:

Axon Enterprise Inc
c/o
17800 N. 85th Street
Scottsdale, AZ 85255
800-978-2737

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.: _____

Summary Description of Items to be Purchased:

Axon Body 3 Body Cameras, Storage, Warranty,

Exhibits appended and made a part of this Agreement:

Exhibit A: List of supplies, equipment, or materials to be purchased.

The City and Vendor agree as set forth below.

1. Purchase. Vendor agrees to sell and City agrees to purchase the items on **Exhibit A** appended hereto and by this reference incorporated herein as if fully set forth here for the sum set forth hereinabove.
2. Delivery. (FOB **506 E. Main Street, Ste 102, Aspen, Colorado 81611**)
[Delivery Address]
3. Contract Documents. This Agreement shall include all Contract Documents as the same are listed in the Invitation to Bid and said Contract Document are hereby made a part of this Agreement as if fully set out at length herein.
4. Warranties. Five year Technology Assurance Plan Warranty AB3.
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 Vendor respectively and their agents, representatives, employee, successors, assigns and legal representatives. Neither the City nor the Vendor shall have the right to assign, transfer or sublet its interest or obligations hereunder without the written consent of the other party.
6. 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 Vendor 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 Vendor because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.
7. Waivers. No waiver of default by either party of any of the terms, covenants or conditions hereof to be performed, kept and observed by the other party shall be construed, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.
8. Agreement Made in Colorado. The parties agree that this Agreement was made in accordance with the laws of the State of Colorado and shall be so construed. Venue is agreed to be exclusively in the courts of Pitkin County, Colorado.
9. 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.
10. 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.

11. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Vendor 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 Vendor 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.

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

(A) Vendor 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 Vendor for the purpose of securing business.

(B) Vendor 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) Vendor 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 vendor, 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 Vendor; and
4. Recover such value from the offending parties.

13. Termination for Default or for Convenience of City. 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.

14. 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 using 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.

15. City Council Approval. 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.

16. 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 under this Agreement. Vendor agrees to meet all of the requirements of City's municipal code, section 13-98, pertaining to nondiscrimination in employment. Vendor further agrees to comply with the letter and the spirit of the Colorado Antidiscrimination Act of 1957, as amended and other applicable state and federal laws respecting discrimination and unfair employment practices.

17. 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, vendor 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.

18. Authorized Representative. The undersigned representative of Vendor, as an inducement to the City to execute this Agreement, represents that he/she is an authorized representative of Vendor 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.

19. 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.

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: _____
Aspen City Manager

Linda Manning, City Clerk

Date

SUPPLIER:

AXON ENTERPRISE, INC.

By: _____

Title

Date



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-216113-43714.657KP

Issued: 09/06/2019



Quote Expiration: 09/15/2019

Account Number: 108397

Payment Terms: Net 30
Delivery Method: Fedex - Ground

SHIP TO

Linda Consuegra
Aspen Police Department - CO
506 E. MAIN STE. #102
Aspen, CO 81611
US

BILL TO

Aspen Police Department - CO
506 E. MAIN STE. #102
Aspen, CO 81611
US

SALES REPRESENTATIVE

Kyle Panasewicz
Phone: (480) 905-2071
Email: kylep@axon.com
Fax: (480) 658-0673

PRIMARY CONTACT

Linda Consuegra
Phone: (970) 920-5400
Email: linda.consuegra@cityofaspen.com

Year 1

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85114	EVIDENCE.COM INCLUDED STORAGE (GB)-5 YEAR CONTRACT	1,360	0.00	0.00	0.00
80012	BASIC EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	1	180.00	180.00	180.00
85110	EVIDENCE.COM INCLUDED STORAGE	10	0.00	0.00	0.00
Hardware					
73202	AXON BODY 3 - NA10	34	699.00	174.75	5,941.50
74210	AXON BODY 3 - 8 BAY DOCK	4	1,495.00	747.50	2,990.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	4	42.00	0.00	0.00
73253	5 Year Technology Assurance Plan Warranty AB3 Camera	34	0.00	0.00	0.00
73255	5 Year Technology Assurance Plan Warranty AB3 Dock 8 Bay	4	0.00	0.00	0.00
74028	WING CLIP MOUNT, AXON RAPIDLOCK	34	0.00	0.00	0.00
11507	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK	34	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	34	0.00	0.00	0.00
Other					
73460	EVIDENCE.COM UNLIMITED PLUS DOCK TAP: 5 YEAR	34	0.00	0.00	0.00
73461	Evidence.com Unlimited Plus License Annual Payment	34	1,068.00	1,068.00	36,312.00

Year 1 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other (Continued)					
71019	NORTH AMERICA POWER CORD	4	0.00	0.00	0.00
				Subtotal	45,423.50
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	45,423.50

Spares

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware					
73202	AXON BODY 3 - NA10	2	699.00	0.00	0.00
73253	5 Year Technology Assurance Plan Warranty AB3 Camera	2	0.00	0.00	0.00
74028	WING CLIP MOUNT, AXON RAPIDLOCK	2	0.00	0.00	0.00
11507	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK	2	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	2	0.00	0.00	0.00
				Subtotal	0.00
				Estimated Tax	0.00
				Total	0.00

Year 2

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80013	BASIC EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	1	180.00	180.00	180.00
85110	EVIDENCE.COM INCLUDED STORAGE	10	0.00	0.00	0.00
Other					
73461	Evidence.com Unlimited Plus License Annual Payment	34	1,068.00	1,068.00	36,312.00
				Subtotal	36,492.00
				Estimated Tax	0.00
				Total	36,492.00

Year 3

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80014	BASIC EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	1	180.00	180.00	180.00
85110	EVIDENCE.COM INCLUDED STORAGE	10	0.00	0.00	0.00

Year 3 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other					
73461	Evidence.com Unlimited Plus License Annual Payment	34	1,068.00	1,068.00	36,312.00
				Subtotal	36,492.00
				Estimated Tax	0.00
				Total	36,492.00

Year 4

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80015	BASIC EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	1	180.00	180.00	180.00
85110	EVIDENCE.COM INCLUDED STORAGE	10	0.00	0.00	0.00
Other					
73461	Evidence.com Unlimited Plus License Annual Payment	34	1,068.00	1,068.00	36,312.00
				Subtotal	36,492.00
				Estimated Tax	0.00
				Total	36,492.00

Year 5

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80016	BASIC EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	1	180.00	180.00	180.00
85110	EVIDENCE.COM INCLUDED STORAGE	10	0.00	0.00	0.00
Other					
73461	Evidence.com Unlimited Plus License Annual Payment	34	1,068.00	1,068.00	36,312.00
				Subtotal	36,492.00
				Estimated Tax	0.00
				Total	36,492.00

Grand Total	191,391.50
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Discounts (USD)

Quote Expiration: 09/15/2019

List Amount	213,772.00
Discounts	22,380.50
Total	191,391.50

**Total excludes applicable taxes*

Summary of Payments

Payment	Amount (USD)
Year 1	45,423.50
Spares	0.00
Year 2	36,492.00
Year 3	36,492.00
Year 4	36,492.00
Year 5	36,492.00
Grand Total	191,391.50

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature:	_____	Date:	_____
Name (Print):	_____	Title:	_____
PO# (Or write N/A):	_____		

Please sign and email to Kyle Panasewicz at kylep@axon.com or fax to (480) 658-0673

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

Quote: Q-216113-43714.657KP

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At 5:00 p.m. Mayor Torre called the regular meeting to order with Councilmembers Richards, Hauenstein, Mullins and Mesirow present.

CITIZEN COMMENTS

1. Matthew Kyle spoke about seasonal housing at marolt. He has lived there for 5 winters. I'm ok with rustic living. The rent was workable for me. The full rate was around \$1000 per month. The city has instituted a 35% increase in my rent \$1,218 plus \$75 to park. There is also a policy if you wanted to book ahead you have to start paying rent on September 1st. Per APCHA, the maximum rental rate for most staying there are category 1 or 2 and rent would be \$646, half of what marolt is. It seems like the town has something against seasonal employees. The city has dropped the ball in creating seasonal housing.
2. Andrew Sandler said a gun is an inanimate object much like a first aid kit or a fire extinguisher. You hope you never need it, but you also hope no one takes your right away to use it if necessary. You cannot legislate against crazy. You cannot tell criminals here's a new law, please follow it and hope they do. This is an old mining town in the old west. It is a slippery slope to erode our liberties. Even though it is a municipal building especially when most people in this building don't carry a gun or are trained on one. I'm not sure where this came up. It seems like a random subject to be talking about when there are so many other important things that are much more crucial than this. I hope we do not remove people's liberties and take away their gun rights especially when bad guys will carry guns. You always want to make sure there is a good guy with a gun.
3. Philip Wolf spoke about HB 1930 marijuana hospitality businesses. It would be a wonderful opportunity for you to allow these. They will be regulated and viable businesses. This will be a progressive bill going through the state. There is an opportunity to start the conversation now.
4. Sharona Bishop said there is a trickle down effect, what happens in Aspen ends up in Garfield county. Statistics show it will be an employee who opens up fire in a government building. The constitution is not up for debate. It says thou shall not infringe on our rights to carry arms. Even in a city or local municipality. I'm always amazed at the audacity of a proposal like this because it seems to imply that you know better than everyone else. The constitution is created in such a way to protect all men from a tyrannical government. The second amendment is there to protect all of the others and should never be thrown around the way it is today. The psychological fear is more devastating than gun shot wounds. The inability for a citizen to protect and defend themselves and the people around them because they think psychological fear is a greater manifestation than actual bullets. She asked council to not consider banning weapons as a real option. Spreading it to public parks is even more audacious.
5. Lauern Baubert echoed what Sharona said. It is not about feelings towards firearms or if you can see a firearm. Concealing a firearm doesn't make everything sunshine and rainbows just because you don't know it is there. If I'm disarmed I have no way to neutralize a threat if someone bypasses the system. I do not want to be disarmed when I am in a park. I want to be able to protect myself and my family. Entities who try to do things like this have been found guilty by the Supreme Court for passing such laws. These laws infringe on our second amendment rights. You are not above the Supreme Court. We ask you not to pass this.
Councilman Mesirow said I respect that you have your perspective and I respect your right to feel safe around your family. My perspective is when you walked in the door I immediately noticed the firearm on your leg. All of my attention went there. I felt a wash of fear come over me. My thoughts immediately go to where do I hide, where do I run. The consequence of which was a complete shift in energy and focus, at least for me, to

the point where I don't even know what the first part of what Philip said was. That is something that is important to consider. Ms. Baubert replied I'm sorry that your concentration level is that small. She asked if a police officer walked in with a firearm would you have had the same feelings. Councilman Mesirow said he ask that you have the same level of respect. She replied my rights do not end where your feelings begin.

6. Phylliss Bronson said Aspen is not Garfield county and we have a right to make our own assessments on how we want to govern. Gun control is the number one public health issue in the county. The W hotel has turned out to be very poor neighbors. They are infiltration the east end neighborhood with giant black vans. They claim they don't have enough space on their property. She stated she is disappointed in the 2 roof city offices solution. The armory is the seat of city hall. We were told it was going to be a two roof solution.
7. Steve Berk said as a person who holds several firearm permits and someone in the defense business, this community has been an open carry state for years and years. What has happened to bring this amendment. When was the last time there was a firearm discharged in a city building. I know the gun issue is a major issue in this country and you want to be political. I think what you are doing is a reaction. I have more fear of being hit crossing the street than getting shot.
Mayor Torre replied I don't want to wait for a gun to go off to act. This started for me when we started looking at safety for the new building.
8. Stephen Olitsky said I'm a gun carrier myself. He asked who brought this forward. It should be made public who brought this forward because I'm not voting for them again. He asked if there has been a public threat in a public building.
9. Maggie Silvers said I support what everyone here has said. Are we a threat. I just want to keep myself and my child safe. I don't remember anyone running on this platform. You know you wouldn't have been elected if you did. I felt safer having a weapon in the room.
Councilwoman Richards said since the election we saw the El Paso and Ohio shootings and multiple others. Public corporations and businesses are concerned about the safety of their customers include Aldi, Walgreens, CVS and others.
10. Lee Mulcahy said the judge ruled the APCHA rules of decorum are not viewpoint neutral or constitutional. When a court says your board is violating the constitution we got problems. This has gone on too long.
11. Sandy Mulcahy said I've talked a number of times about the difficulties that have gone on with APCHA. They have committed some unbelievable violations. You need to look at what they have done to us. It is absolutely wrong.
12. Bob Morris said you do not get to go in a federal court building with a firearm. The proposal might be to take a firearm away from people when they enter a building then give it back when they leave. He asked about the bike lane on Mill street by the wheeler. I don't notice the mountain anymore with the bright yellow huge bike lane there. Curious who makes the decisions how pedestrian and bike lanes are done. He commended the council for taking a proactive stance on a problem that may never be a possibility.
13. Toni Kronberg thanked Skippy for the category 1 conversation. Our focus should be shifted to supply worker force housing. She thanked the kids who participated in the climate march. When we declare an emergency we need to declare what we are doing at home. We went from a 1 roof solution to a 2 roof solution. I strongly believe we need to do what we told the voters we were going to do and keep city hall in armory hall. There are a lot of people in the community who want to give their opinion and we haven't had the opportunity

COUNCIL COMMENTS

Councilwoman Mullins said we still have a 2 roof solution. This building still remains city offices. On APCA, I think we are in much better shape with 2 members of council. On the gun discussion, thanks for coming. We may have heard just one side. Please come back to the next meeting and I hope we have an even better discussion. CML district meeting was in Snowmass Village. We had an overview on what is going on at the state. The next district meeting will be in Aspen. The state meeting is in a few weeks in Denver. Sorry to have missed the march on Friday. I heard it was wonderful and much appreciated by the participants.

Councilman Hauenstein said I like hand guns but open carry is stupid. I think you would be the first target. No one is proposing to take your guns away but make this a gun free zone. There are some members of staff who are fearful. I'm not fearful but it doesn't extend to all members of staff. We have staff members with children who are concerned for their safety. When I was in DC firearms are not allowed in any offices. It is not taking your right to carry away but just in city offices for the safety of staff. I wish we had a better range. I like shooting. He attended mountain pac in DC. They are looking for full funding for the conservation fund. They met with representatives from various states as well as Senator Gardner. He came out last week for full support of the fund. We met with a bunch of other senators and Nancy Pelosi's staff. The climate strike was wonderful.

Councilwoman Mullins said we are looking at the health and human services grants. There are other groups looking at cultural and arts grants. It is confusing for the applicants and those reviewing the grants. She would like council to have a work session to talk about the grant process. It was about 1.6 million dollars last year. Councilmembers Richards and Hauenstein support that.

Councilman Mesirow thanked the kids who led the climate march, it is incredible that we have school age children who are taking the time to make the world a better place. There was an article in the paper on housing. I'm new up here and still learning how to work with staff and fellow council members. The article came forward at a time when we are working on the guidelines. I don't think that was conveyed as well as it could have been. I used strong language because I feel strongly about inclusionary housing. I heard back from all kinds of people on all sides. I wanted to take the time to apologize to anyone who thought they were accused. I would like to communicate that this opportunity is ours.

Mayor Torre gave a thanks to Lead with Love for your seminar. Accolades for Ruggerfest for 52 years in Aspen. It is such a neat event for Aspen to host and he is glad the city is supportive of that. 40 years of Aspen film are going on this week. If you get a chance look up the schedule. The climate march was amazing last week. It was a call for us to do more than we already do. Reduction in carbon emissions by 30 percent by next year. We need your help. There is personal, local, state, national and international responsibility. I am calling on personal action. Whether it is composting at home, not accepting single use plastic, bringing your own to go containers. We will do some of the local.

CITY MANAGER COMMENTS

Sara Ott said Galena plaza is not covered at tomorrow's work session. There is an info only memo that outlines the process. The design team is just getting started on their work. This is the last Monday council meeting. Starting the 8th regular meetings will be held on the 2nd and 4th Tuesdays at 5. Electric busses are in testing driving around town. It is a long time of work coming to fruition. We are also moving forward with final repairs to compete the castle creek

bridge project during the week of October 7th. There will be significant detours. We will also be having a conversation with the USDA.

BOARD REPORTS

Councilwoman Richards attended the Colorado river district annual meeting in Grand Junction. The conversation focused around uncertainty. The drought contingency plan has been signed on to by a number of states. It is focusing on demand management. There is concern about the long term loss of west slope agriculture. The single largest user of the Colorado is the front range. There will be a free dental care clinic October 4th and 5th at the Glenwood Springs high school. Adults and children, no questions asked. She spent 3 days with Club 20. They discussed the 2020 debates. January 23 and 24 is a legislative trip to Denver.

Councilman Hauenstein said CCLC is cleaning up the alley ways. 2 weeks left to the Saturday Market. They talked about increasing composting in the core. CORE is working on their anniversary celebrations and the work plan for next year.

Mayor Torre said ACRA meets tomorrow at 8:30

CONSENT CALENDAR

Mayor Torre said on the consent we are approving Julie Hardman for open space and trails regular member and Adam McCurdy as an alternate. Thanks to those applicants and everyone who applies for the volunteer boards.

- Resolution #100, Series of 2019 – Contract between APCA and Antero CRM for HomeTrek automation project, Phase 2 through Colorado's Statewide Internet Portal Authority
- Board Appointments
- Minutes – September 9, 2019

Councilwoman Mullins moved to adopt the consent calendar; seconded by Councilman Mesirow. All in favor, motion carried.

ORDINANCE #25, SERIES OF 2019 – prohibition of weapons in city facilities

Councilman Hauenstein said this is a symbolic measure. Without active enforcement it means nothing at all. I would like council consideration of what the cost would be if we were to enforce this and what the budget impact would be.

Councilman Mesirow asked for more clarity on what this does or does not apply to. He asked about affordable housing owned by the city. Ms. Ott replied should it be enacted it is city owned buildings with appropriate signage noticing it. I would designate what buildings need signed. I would not be making assumptions for affordable housing buildings. Councilman Mesirow said it would not include housing or parks. Jim True, city attorney said you have that authority. Councilman Mesirow asked about city offices in building we don't own. Mr. True replied we have that authority.

Councilman Hauenstein said this is not a politically correct measure. It is safety of staff. Councilwoman Richards said I would add the general public.

Councilwoman Mullins moved to read Ordinance #25, Series of 2019; seconded by Councilwoman Richards. All in favor, motion carried.

ORDINANCE NO. 25

(SERIES OF 2019)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,
AMENDING CHAPTER 15.04 OF THE ASPEN MUNICIPAL CODE, MISCELLANEOUS
OFFENSES AND PENALTIES, BY THE ADDITION OF SECTION 15.04.740. DEADLY
WEAPONS IN CITY BUILDINGS PROHIBITED

Councilwoman Richards moved to adopt Ordinance #25, Series of 2019 on first reading; seconded by Councilwoman Mullins. Roll call vote. Councilmember Mesirow, yes; Hauenstein, yes; Richards, yes; Mullins, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #21, SERIES OF 2019 – Water Treatment Plant Facility – 480 Doolittle Drive –
Major Public Project Review

Garrett Larimar, community development, said the water plant facilities are located up Castle Creek road, west to Meadowood and Moore subdivision and adjacent to the water place housing. The property was annexed in 1982. In 1983 it was rezoned to public and an SPA was applied. SPAs are now considered PDs. In 1984 there was an amendment for improvements for additional structures. In 1996 another amendment to subdivide into 25 lots and create the water place housing. This is a major public project review. Council is the final decision making authority. There is a major amendment of the PD for additional structures and square footage, GM review, 8040 greenline review, transportation and parking management and conditional use for one of the structures. This is mandated by the state of Colorado for governmental agencies which permit an expedited review process. The city adheres to the regular review process. This went to the development review committee with referral agencies. They can provide conditions of approval, advisory comments or request changes to the application. The next step is a public hearing with P&Z. They make a recommendation to council and consider the employee generation. Last is a one step combined review with council. He showed aerial images of the facility. There is an admin building that houses admin and management staff as well the raw water building, electric and water distribution building, reservoir, 2 clarifiers and west and east plant buildings. There is also a treated water tank with a solar array and residual treatment area. He showed the proposed site plan with the proposed improvements. The request is to expand the administration building, new vehicle maintenance facility, expansion of raw water storage and expansion of residual treatment area. The admin building sits on top of a water storage tank. The addition would extend above the remainder of the storage tank. Vehicle storage would permit unified storage. The west plant addition is also proposed. The reservoir is also proposed to expand. The existing is 9.2 acre feet. The total would be 25.86 with the expansion. Staff has stated current raw water storage accommodates ¼ of a peak day demand. This would improve resiliency. This is not a solution for long term storage options that are being considered. The final request is expanded and improved residual treatment areas. Proposed a phasing plan mainly due to budgetary considerations and refinement of design and permitting requirements. Phase 1 would be the vehicle maintenance and storage building, phase 2 would be the treatment and west plant expansion, in 2021. Phase 3 is the admin building and the final stage is the reservoir expansion in 2025. This is in the public zone district. The majority of the improvements are permitted uses in public zone with the exception of vehicle storage, that requires a conditional use. The application complies with the PD, 8040 greenline and conditional use and major public project review. For transportation and parking more details are needed. The applicant is to provide them prior to building permit issuance. There is limited access to the site and it already contains the amenities you would expect. They are working with engineering to find solutions to the immediate area. Growth management review, there are elements that require input. A number of questions from first reading and were responded to in the memo. There are 2 important aspects to GM review. Annual

allotments are generated but there is no cap on the limit. 2nd is the code provides an employee generation rate of 5.1 FTEs per 1000 square feet. For non office there is a path forward with P&Z and council setting the rate. At P&Z the rate was determined. We are looking for input on the affordable housing requirement based on that generation. There are 26.5 FTEs on site. APCHA reviewed the current generation and provided a recommendation of an employee audit prior to building permit issuance. Any employees generated from the audit will require mitigation. Council review is to determine the affordable housing mitigation requirement. Council can waive, partially waive or require mitigation. Staff recommends council approve the requirements for reviews subject to conditions.

Councilwoman Richards said she would not like to waive the mitigation but make it required. She is glad to see the reservoir expansion a little further out. She wants to double check the soils and capacities. Safety has to be something entirely insured. She fully agrees with more short term capacity on hand.

Councilwoman Mullins said her two concerns are GM and TIA. I support we do not waive affordable housing mitigation. She thinks we need to exercise the audit. Where are they lacking in the TIA planning and how do you propose to go forward.

Patrick Rawley, representing the applicant, said the vehicle storage building is intended to store large heavy equipment. The expansion of the admin building will consolidate current employees and provided dedicated meeting place. Previously, there was some work to remodel the admin building but cost prohibited. The expansion will provide adequate office space and meeting space. Integration of the new chlorine structure and tanks are for operational efficiencies. All of the proposed development is not new but to enhance what is currently going on. It will not increase the number of employees. The expansion of residual treatment area will provide additional redundancies. The reservoir expansion is there to meet daily and possibly long term resiliency. No new employees are anticipated to be generated from this. Development will occur over multiple years. In 1997 there was an SPA amendment to identify what is developable. That is 4.6 acres. .08 to 1 floor area ratio which generated 16,030 square feet allowable floor area. We show we are 61 square feet over what was formally approved. He showed the site plan. The water place affordable housing subdivided the original acreage. He showed images of the garage as designed. The admin building addition is 1,600 square feet. The current exterior deck will now be meeting space and offices. There is a 572 square feet addition to the west plant chlorination area. It will also enhance operational efficiencies. The backwash facility will provide for additional pond redundancy. Only having one pond it eventually gets filled up with materials. The second pond will give additional redundancy and capacity. The expansion of raw water provides for increased daily supply of water to the city. It will provide for disruption against avalanche, wildfires and contamination or unforeseen events. 9.2 acre feet exists to be expanded to 25.86. A little under 5.5 million gallons of water. On phasing, the maintenance building will be first, followed by the backwash pond, west plant, admin expansion and reservoir last.

Conditions of approval, we feel the 2 year look back is appropriate. We will work with APCHA on the front end to identify the 26.5 FTEs currently on the site. Additional documentation will be provided. If there are additional employees we will mitigate. We are also fine ensuring the impacts to native plants are minimized. We've met with engineering. Access to the site is controlled. Many features that would be typically part of a TIA are already in use. There is a possibility to be part of pedestrian improvements for other developments. At the base of Doolittle drive is a walkway with a handrail that could be an option or at the bus stops. We will continue to work with engineering to meet our obligation.

Councilwoman Richards said there are safety factors when dealing with chlorine. She would like to plan for solar on the facility where possible.

Councilman Mesirow said he is supportive of the project. He seconds Rachael's points about solar and full mitigation. It sounds like the existing employees have never been mitigated for. Mr. Rawley replied in one way or another they have through the city constructing affordable housing units. Mr. True said we don't have individual credits but the city has at times accepted that we have created a lot of housing. We have used those produced inventory as mitigation for development. Councilman Mesirow asked about the accounting of that. He would like to fully mitigate for all the employees at the building. Councilwoman Richards said that is a different standard than any private sector business would have. Councilman Mesirow said if I could retro go back and mitigate for those employees I would. I understand why we don't do that. Councilwoman Richards asked should we increase everyone's water rates to mitigate for that. Councilman Mesirow replied no. I simply look at it from a baseline of 26 employees in the city and we mitigate for 60% that have never been mitigated for. Councilwoman Mullins replied it is a worthy discussion but a real policy shift. The precedent is for essential public facilities to have these audits. If there are additional employees they be mitigated for but not to include the previous. A few years ago there was a waiver of mitigation on historic buildings in town. It was not done on one project but a step back to look at the whole project. I don't think the correct way to do it is to change the policy for this one project.

Councilman Hauenstein said there was an in depth discussion about existing buildings and mitigation for them. I don't support going back and calling for housing for the existing employees at the plant and facility. I agree with Ann if we want to have that discussion as a policy discussion in the future.

Councilwoman Richards said I could see it as a future work session. At some point it is the user of the services of the facilities that will change. It starts to be where do the dollars come from. I understand your broader intent. We want to be up front with the same that anyone else would do moving forward.

Mayor Torre opened the public comment.

1. Toni Kronberg said I support the application. It is long overdue. The new city hall generated employees were mitigated by relying on prior credits. So is this. We are shorting ourselves. A policy discussion needs to happen on this topic. The ordinance is based on a lot of conditions. A lot is happening between now and building permit and there is not an opportunity for public comment. There are a lot of things where we don't know what we are really going to get. There are too many conditions left unknown.

Mayor Torre closed the public comment.

Councilman Hauenstein said the drain line for future expansion is that using the existing drain line. Ryan Leobach, utilities, said we haven't done the hydraulic analysis to see if it is sufficient yet. Councilman Hauenstein said he agrees with the housing survey. I don't want to waive mitigation. Are there any public trails on site. Andy Rosello, utilities, replied there are 2 trails on site. There is the back road that continues towards Highlands and a second trail. We've met with parks extensively and they did not feel the trails would be affected. Councilman Hauenstein said he is supportive of this.

Councilwoman Mullins said she supports the affordable housing 2 year audit and no waiver. On the TIA it sounds like you are going in a good direction. The existing bleach building the pipes will be eliminated. Mr. Rosello stated we feed chlorine to both buildings. The lines are problematic in the winter. This facilitates the movement of chemicals on site. Councilwoman Mullins said on the natural environment she would love to see a condition about eliminating noxious weeds on site.

Councilman Mesirow said on P&Z there were several projects with multi year audits. Can't we just say any time a new employee is added it is mitigated for at the time. Mr. True said you have that right. Are you talking about it as a general policy for all growth or just proposing that here. Here, you clearly have the authority. Councilwoman Richards said I would add a 10 year audit to the count as well. Councilwoman Mullins said I want to go back to the precedent and if we are going to change it we need to have a conversation on the impacts of the change. I would not support a rolling audit until we have a bigger conversation. 5 years would match up to the reservoir expansion.

Jennifer Phelan, community development, said the recommendation APCA and P&Z made was the first audit 2 years out of the final phase of completion. You are probably not looking at an audit for 7 years. Councilwoman Richards said it sounds like 2 years after the completion of the project then we could make it 5 years after that.

Councilwoman Richards move to adopt Ordinance #21, Series of 2019 with the amendment for a 5 year audit after the completion of the project for affordable housing mitigation purposes. Council direction is to not waive the mitigation requirement. Seconded by Councilwoman Mullins. Roll call vote. Councilmember Mullins, yes; Richards, yes; Mesirow, yes; Hauenstein, yes; Mayor Torre, yes. Motion carried.

APCHA RETREAT PREP

Councilman Mesirow said the intention of the retreat is to come up with a work plan for the following year. Councilwoman Mullins said she would like to see a discussion on funding and the county and city partnership. Is it affordable housing or work force housing. She asked for a discussion on what percentage we would like to house. Is it 100 or 65 or something else. She suggested a discussion of the different housing opportunities. Councilwoman Richards said APCA is a policy board not construction or planning and zoning. Councilwoman Mullins said these are all issues APCA should be weighing in on.

Councilman Hauenstein asked on additional funding, is the board thinking of doing development. Councilman Mesirow replied I don't know that. Ms. Ott said one of the requirements of the IGA is the board to develop an annual workplan and 5 year strategic plan. Both come back before council for approval in conjunction with your budget conversation. The packet contains a pretty optimistic list of items to tackle. The board needs to prioritize those. Regarding funding, the IGA makes an assumption that APCHJA is 1/3 funding themselves then 2/3 by the other jurisdictions. Mr. True said APCA has power to pursue a tax. That is not what has been contemplated. There are other steps that need to be taken in order for APCA to exercise their powers.

Councilwoman Richards said the real goal is to break down the silos between APCA. She asked how do we have true public engagement about the guideline changes. She said the real goal is to break down the silos between APCA. She said engaging the public should be on the agenda. People are afraid about what is going on with the changes.

Councilwoman Mullins said she supports the public outreach.

PREPARATION FOR MOUNTAIN TOWN 2030 SUMMIT

Ashley Perl, environmental health, said Chris Menges will be going on behalf of the city. Part of the agenda revolves around commitments. They are looking to have a conversation and for folks to walk away with a commitment in mind. Examples of commitments include a numerical green house gas reduction goal. If you are considering of going with a goal in that area I would

suggest an interim goal that is in line with the ones we already have. Another goal would be more program specific like waste reduction or transportation. Park City is asking Aspen to come and take a leadership role.

RESOLUTION #102, SERIES OF 2019

Mr. True stated Aspen Public Facilities owns the property. There are subleases to the Isis retail group and theatre. There is also a penthouse on the top. The Isis retail group has subleases and the purpose of the original project was the city to issue COPs to finance the redevelopment. They would retain ownership through the APFA. The Isis retail group advised us early in the year they wish to sell their interest. They would pay off their portion of the COPs. It would give us the obligation to convey the property to them in fee simple. They gave us notice they would sell to a 3rd party for some 13 or so million dollars. They gave us notice of right of first refusal. Council decided not to exercise their right of first refusal so the sale has moved forward.

Resolution 102 approves all the complicated agreements that are necessary to complete the sale by Isis retail group to a 3rd party. We retain rights associated by Aspen film's property if they decide to sell. It is relatively simple. Isis retail group wants to sell to a 3rd party and we have to accommodate that. A portion of the COPs will be paid off.

Councilman Hauenstein said the balance is 4.46 million. Mr. True said I thought it was 2.3 million. Both parties have been paying down the COPs since 2007 or 2008. The balance is 6.695 million. Isis retail will pay off 4.46 leaving 2.03 left outstanding. That amount is the obligation of Aspen film to pay off. Once they do the city is obligated to convey the property to Aspen film. Councilman Hauenstein said we were offered the opportunity for first refusal. If we could have got it for 4.46. How do we get in to that situation. Councilwoman Richards said Sam Houston tried to sell it to the city but it wasn't doable at the time. The city did not want to lose the theatre. The partnership was assembled. Mr. True said the redevelopment had happened and we were trying to bail out a potentially failing movie theatre operation. We made a deal with IRG and film fest to pay off COPs the city would use to acquire the property. We did not have the ability to pay the 4 million left in the COPs. Once they are paid off the deal was it would go to those entities.

Councilwoman Richards asked will the theatre still be deed restricted. Mr. True replied to a degree. There is still an ability for the owner of the film fest to come in and say it is not financially working. Councilwoman Richards asked about the first right of refusal. Mr. True said if the price changes they would have to give us another opportunity.

Councilwoman Mullins said the challenge for us is to make sure the Isis remains a theatre if we want to. Mr. True said they do have obligations but the recognition is Aspen film is Aspen film. This is for the commercial units to the west.

Mr. True recommend council continue this meeting until 9:15 to convene the public facilities authority to approve a resolution that is the same as this resolution. At this point it is the authority that owns this property.

Councilwoman Richards moved to continue the meeting until 9:17; seconded by Councilman Mesirow. All in favor, motion carried.

Mayor Torre called to order the Aspen Public Facilities Authority. All present except for Pete Strecker. Authority member Richards moved to appoint Torre as chairman. All in favor, motion carried.

Mr. True said the board needs to approve the resolution that is in the packet. It designates the finance director with the authority to sell the property and sign the closing documents. It will be conveyed from the public facilities authority directly to the 3rd party buyer. The RETT will be paid by that buyer.

Authority member Richards moved to approve the APFA to direct the sale; seconded by Authority member Mesirow. All in favor, motion carried.

At 9:13 Authority member Richards moved to adjourn; seconded by Authority member Mullins. All in favor, motion carried.

Mayor Torre called the regular meeting to order.

Mr. True recommended Council go into executive session pursuant to C.R.S. 24-6-402 (a) The purchase, acquisition, lease, transfer or sale of any real, personal, or other property interest; (b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions and (e) Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators.

At 9:20 p.m. Councilman Hauenstein moved to go in to executive session; seconded by Councilwoman Richards. All in favor, motion carried.

At 10:15 p.m. Councilwoman Mullins moved to come out of executive session; seconded by Councilman Hauenstein. All in favor, motion carried.

Councilwoman Mullins moved to adjourn; seconded by Councilman Hauenstein. All in favor, motion carried.

Linda Manning
City Clerk



MEMORANDUM

TO: Mayor Torre and Aspen City Council

FROM: Sarah Yoon, Preservation Planner; Community Development

THROUGH: Jennifer Phelan, Interim Community Development Director

MEMO DATE: October 1, 2019

MEETING DATE: Second Reading, October 8, 2019 – Public Hearing

RE: Ordinance No. 22, Series of 2019; 616 ½ West Main Street, Unit B
Establishment of Transferable Development Rights (TDR)

REQUEST FOR A CONTINUANCE:

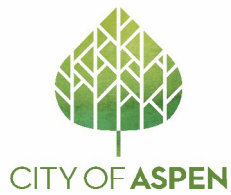
Due to Yom Kippur starting on Tuesday, October 8th, the scheduled Council meeting will be ending early.

RECOMMENDATIONS:

Staff recommends that the application be continued to the **October 22nd, 2019** meeting date. Continuing the hearing will keep the application active and preserve the City's published public notice in the newspaper.

PROPOSED MOTION:

"I move to continue the 616 ½ W. Main Establishment of Transferable Development Rights (TDR) to **October 22nd, 2019**."



MEMORANDUM

TO: Mayor and City Council

FROM: Sara Ott, City Manager
Jim True, City Attorney

MEETING DATE: October 8, 2019

RE: Ordinance # 25, Series of 2019, Prohibiting the Possession of Deadly Weapons within City-owned Buildings

REQUEST FOR A CONTINUANCE: Due to Yom Kippur starting on Tuesday, October 8th, the scheduled Council meeting will be ending early.

RECOMMENDATIONS: Staff recommends that the ordinance be continued to the October 22nd, 2019 meeting date. If there are members of the public present who would like to comment and cannot be present for the October 22nd date, Staff recommends Council take their comments.

PROPOSED MOTION: I move to continue Ordinance #25, Series of 2019 prohibiting the possession of deadly weapons within city-owned buildings to October 22, 2019.



To: CML Executive Board
From: Kevin Bommer, Executive Director
Date: June 11, 2019
Subject: Recommendation to support Proposition CC – Retain State Revenue in Excess of Limit

Summary

During the 2019 legislative session, CML supported HB 19-1257 and HB 19-1258. HB 1257 refers to the voters in November a single ballot question – Proposition CC – that, if passed, allows the state to permanently retain revenue in excess of the state's TABOR limit set by Referendum C and requiring that retained revenue be distributed to public schools, higher education, and transportation/transit. HB 1258, effective only upon voter approval of Proposition CC, requires a 1/3 split to each category.

If approved, there may be no short-term revenue impact. The state's March revenue forecast does not anticipate a TABOR surplus in the current or next state fiscal year, the latter ending June 30, 2021. The next forecast is due this month, which may revise that estimate. Regardless, enactment by Proposition CC by voters would ensure that in any future years that state revenue exceeds the state TABOR limit, excess revenues will be allocated accordingly in the next state fiscal year. Specific to municipal interests, the portion allocated to transportation/transit will be distributed through the HUTF formula, meaning municipalities will split 18% in the same manner that regular HUTF calculations and disbursements are made annually.

Staff noted in testimony that this approach should not be mistaken for a statewide solution to transportation funding problems – and the same could likely be said for K-12 and higher education. Staff also noted passage of this measure would remove pressure to backfill future TABOR refunds with severance tax revenue, as was done in 2015. Given the important inclusion of local transportation interests by the General Assembly, as well as the League's general interest in ensuring constraints of the revenue limit both do not harm and may help municipal interests, staff recommends CML support Proposition CC.

Staff Recommended Motion

Because of the potential to assist with local transportation funding needs, as well as to protect municipal interests from constraints on the state budget during times of economic prosperity, the Colorado Municipal League does now support Proposition CC. The League is authorized to make cash and other contributions from private source revenues to an appropriate issue committee provided such contributions are expended from the special fund maintained by the League for such purposes. Such contributions shall not exceed private source revenues available to the League. The League is also authorized to make expenditures of staff time and other resources in the regular course and scope of the League's work informing its membership and others.

RESOLUTION #109
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, IN SUPPORT OF COLORADO PROPOSITION CC, A MEASURE ON THE NOVEMBER 2019 STATE BALLOT.

WHEREAS, Colorado regularly ranks as the top economy in the country, but cannot invest all the money it collects for students, roads, bridges and transit because of current state spending limits established in 1992; and

WHEREAS, Colorado ranks among the bottom states in the country for the quality of its transportation infrastructure and K-12 public education investments; and

WHEREAS, if Proposition CC is adopted, the state will be allowed to keep and spend annual revenue in excess of the state's 1992 spending limits and utilize the revenue for: (A) state and local highway and transit projects; (B) public schools, and (C) public higher education; with each of these categories receiving one-third of the authorized revenue; and

WHEREAS, Proposition CC is similar to revenue retention ballot measures already approved in the overwhelming majority of the municipalities in Colorado; and

WHEREAS, the state estimates that the additional spending to be authorized by Proposition CC may range from \$277 million to \$1.2 billion in the next two state fiscal years; and

WHEREAS, nearly 25% of public roads across Colorado are rated as being in "poor" condition and almost 500 bridges have been deemed structurally deficient; and

WHEREAS, driving on roads in need of repair in Colorado costs each driver \$580 per year; and

WHEREAS, 40% of the money Prop CC raises for transportation will go to local governments under existing Highway User Tax Fund (HUTF) formulas, with municipalities expected to receive additional HUTF disbursements which may range from \$16 million to \$79 million in the next two state fiscal years alone, along with the potential for additional revenue for municipal transportation projects and programs in future years; and

WHEREAS, Colorado spends roughly \$2,500 less per student than the national average, ranking below some of the poorest states in the nation, including: Kentucky, Louisiana, New Mexico, West Virginia, and Wyoming; and

WHEREAS, over 60% of Colorado's school districts operate on a four-day week—the most in the country; and

WHEREAS, the state estimates that the approval of Proposition CC may provide an additional \$92 million to \$439 million for investment in state education programs in the next two years alone, with the potential for additional revenue for this purpose in the future; and

WHEREAS, in general the approval of Proposition CC will relieve the state of fiscal stress caused by the 1992 spending limit, and thus make it less likely that the state will reduce or eliminate spending on other state services and programs of concern to Colorado municipalities; and

WHEREAS, thousands of Colorado's business, public sector, and academic leaders agree that an arbitrary cap preventing the state from investing with the revenue it already collects is not sound fiscal policy; and

WHEREAS, allowing the state to invest the revenue it already collects will stimulate growth in our economy and help provide the critical services that enable all Coloradans the chance to provide for themselves and their families; and

WHEREAS, Proposition CC contains provisions for unprecedented transparency and accountability, including independent, annual, publicly available audits so Coloradans can see where their money is going; and

WHEREAS, Proposition CC fully preserves the authority of the voters to approve new taxes or tax rate increases at both the state and local level of government, as guaranteed under current law; and

WHEREAS, §1-45-117 (1)(b)(III) of the Colorado Fair Campaign Practices Act authorizes the adoption of this Resolution and reporting the passage of or distributing this Resolution by established, customary means, other than paid advertising, through which the City of Aspen resolutions are regularly provided to the public.

NOW THEREFORE, BE IT RESOLVED that the City of Aspen Mayor and City Council officially declares its support for Proposition CC and for the reasons set forth in this Resolution urges a YES vote on the proposition at the November 5, 2019 state election.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 8th day of October, 2019.

Torre, 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 Aspen, Colorado, at a meeting held October 8, 2019.

Linda Manning, City Clerk



To: CML Executive Board
From: Meghan Dollar, Legislative & Policy Advocate
Brandy DeLange, Legislative & Policy Advocate
Date: June 11, 2019
Subject: Recommendation to support Proposition DD, Voter Approval to Tax Sports Betting Revenue

Summary

During the 2019 legislative session, CML supported HB 19-1327. HB 1327 authorizes sports betting within the existing framework and regulatory scheme for limited gaming in Colorado. It authorizes sports betting with master licenses held only by those entities licensed to conduct limited gaming within the three host cities, and requires local voter approval in the three host cities. The licensees in the three host cities may contract with online sports betting entities. This regulatory mechanism mirrors past voter intent for limited gaming. HB 1327 also refers to the voters in November a single ballot question – Proposition DD – that, if passed, would tax future proceeds from sports betting and allocates the revenue to the Colorado State Water Plan and exempt the tax revenue from the state's TABOR limit.

Should Proposition DD pass, the revenue generated from sports betting will be allocated as follows. First, the funds will go to the repayment of General Fund moneys provided for startup costs for the Division of Gaming. Second, the revenue will fund ongoing Division of Gaming administrative expenses for sports betting. Third, six percent of the full fiscal year sports betting tax revenue will be transferred to the Hold Harmless Fund. The Hold Harmless Fund will be distributed per the current limited gaming formula. The three gaming towns will receive a portion. Fourth, \$130,000 will be allocated for the prevention, education, and treatment of gambling addiction. Finally, the remaining portion of the revenue will be transferred to a cash fund for State Water Plan implementation. Grants made from the cash fund will go to projects that focus on water storage, supply, water conservation, land use, agriculture, the environment and recreational uses which all provide a municipal benefit. Staff recommends support for the question.

Staff Recommended Motion

Because the regulatory mechanism follows the intent of the voters regarding limited gaming in Colorado, and the revenue goes to the Colorado State Water Plan which will have a direct municipal impact, the Colorado Municipal League does now support Proposition DD. The League is authorized to make cash and other contributions from private source revenues to an appropriate issue committee provided such contributions are expended from the special fund maintained by the League for such purposes. Such contributions shall not exceed private source revenues available to the League. The League is also authorized to make expenditures of staff time and other resources in the regular course and scope of the League's work informing its membership and others.

RESOLUTION #110
(Series of 2019)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN,
COLORADO, IN SUPPORT OF COLORADO PROPOSITION DD, A
MEASURE ON THE NOVEMBER 2019 STATE BALLOT.**

WHEREAS, in the 2019 legislative session, HB 19-1327 authorized sports betting within the existing framework and regulatory scheme for limited gaming in Colorado; and

WHEREAS, HB 19-1327 authorizes sports betting with master licenses held only by those entities licensed to conduct limited gaming within the three host cities and the licensees in the three host cities may contract with online sports betting entities; and

WHEREAS, this regulatory mechanism mirrors past voter intent for limited gaming; and

WHEREAS, HB 19-1327 also refers a single ballot question to the voters in November, 2019 as Proposition DD; and

WHEREAS, Proposition DD would tax future proceeds from sports betting and allocate the revenue to the Colorado State Water Plan and exempt the tax revenue from the state's TABOR limit; and

WHEREAS, the revenue generated from sports betting will be specifically allocated and the remaining portion of the revenue will be transferred to a cash fund for State Water Plan implementation; and

WHEREAS, the City of Aspen respectfully encourages current legislators to find a long-term, sustainable source of funding for the Colorado Water Plan that is a robust, open, transparent and state-wide process for prioritizing projects that receive funding and support from the state level; and

WHEREAS, Proposition DD aligns with the City's support for funding the Colorado Water Plan as the regulatory mechanism follows the intent of the voters regarding limited gaming in Colorado and the revenue goes to the Colorado Water Plan which will have a direct municipal impact.

NOW THEREFORE, BE IT RESOLVED that the City of Aspen Mayor and City Council officially declares its support for Proposition DD and for the reasons set forth in this Resolution urges a YES vote on the proposition at the November 5, 2019 state election.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 8th day of October, 2019.

Torre, 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 Aspen, Colorado, at a meeting held October 8, 2019.

Linda Manning, City Clerk