

2020 BMMD SEWER IMPROVEMENT PROJECT

OWNER AND CONTRACTOR AGREEMENT

AGREEMENT made as of the __ day of June in the year 2020.

BETWEEN the **Owner**: Buffalo Mountain Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado and **CONTRACTOR**

The **Work** is the BMMD 2020 Sewer Improvements in or near the Wildernest Subdivision in Summit County, Colorado, all as more specifically described on the bid plans and documents on file with the District and dated **May 12, 2020**.

The Owner and Contractor agree as follows.

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the **Work** described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND BONDS

- 2.1** The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
- 2.2** The Contractor shall achieve **Substantial Completion** of the entire Work not later than **October 15, 2020** and **Final Completion** not later than **November 1, 2020**, subject to adjustments of this Contract Time as provided in the Contract Documents.
- 2.3** Contractor and Owner recognize that the time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the time frame specified in paragraph 2.2, above, plus any extensions thereof allowed in accordance herewith. The Parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration setting the actual loss suffered by Owner if the Work is not completed on time. Accordingly instead of requiring such proof Owner and Contractor agree that as liquidated damages for delay (and not as a penalty) Contractor shall pay to Owner \$500.00 for each calendar day that expires after the date specified in paragraph 2.2 for Substantial

Completion until the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, fail or refuse to complete the remaining Work within the time stated for Final Completion, or any proper extension thereof granted by Owner, Contractor shall pay to Owner \$500.00 for each calendar day that expires after the time specified in paragraph 2.2 for completion and readiness for final payment until the Work is completed and ready for final payment.

- 2.4** Upon award of the Work and as a condition of the execution of this Agreement, the Contractor shall provide to the Owner payment and performance bonds from a surety acceptable to the Owner, each in the full amount of the contract price, assuring the faithful performance of the work and the payment for all costs of labor and materials.

ARTICLE 3 CONTRACT SUM

- 3.1** The Contract Sum is based upon the unit prices as follows:

See Bid Form, attached hereto as Exhibit A; provided, however, that the total Contract Sum shall not exceed **CONTRACT AMOUNT**, without a duly approved and executed change order issued by the Owner in accordance with this Agreement.

ARTICLE 4 PAYMENTS

4.1 PROGRESS PAYMENTS

- 4.1.1** Based upon Applications for Payment submitted to the Owner by the Contractor, and Owner's consultation with the Manager, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- 4.1.2** Provided that an Application for Payment is received by the Manager not later than the 5th day of the month, the Owner shall make payment to the Contractor not later than the 27th day of the month. If an Application for Payment is received by the Manager after the date fixed above, the Application shall be considered as if it was received as of the 5th day of the next following month.
- 4.1.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of one percent (1%) per month simple interest.
- 4.1.4** Retainage shall be withheld in accordance with Colorado law.

4.2 FINAL PAYMENT

4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2** a final Certificate for Payment has been issued by the Manager; and
- .3** Final Payment has been advertised and the time for claims has passed (without claims having been made) as set forth in the Special Conditions.

ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1 The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

5.1.1 The Agreement is this executed Agreement between Owner and Contractor.

5.1.2 Other documents, if any, forming part of the Contract Documents include any and all applicable laws, resolutions, ordinances, rules or regulations of any governmental entity having jurisdiction over the activities contemplated herein.

ARTICLE 6 GENERAL PROVISIONS

6.1 THE CONTRACT DOCUMENTS

The Contract Documents shall be deemed to include this Owner and Contractor Agreement; the Bid Form, including Contract Sum and unit prices attached hereto as Exhibit A; the plans and specifications prepared by Owner dated May 12, 2020 and on file with the Owner; the Special Conditions attached hereto as Exhibit B; and any Modifications thereto expressly agreed upon by the Parties or occurring as result of justifiable delays qualifying for an extension of the Contract Time (as defined below.) A "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Manager. The intent of the Contract Documents to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required

to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

6.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and a Subcontractor or sub-subcontractor or (2) between any persons or entities other than the Owner and Contractor.

6.3 THE WORK

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

6.4 EXECUTION OF THE CONTRACT

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

6.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Work is to be executed by the Contractor pursuant to the plans, drawings, specifications and other documents, including those in electronic form, ("Plans"). The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Plans. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Plans and other documents prepared by the Owner and the Owner's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to the Work. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to the Work outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and

reproduce applicable portions of the Plans and other documents prepared by the Owner and the Owner's consultants appropriate to and for use in the execution of their Work under the Contract Documents.

ARTICLE 7 OWNER

7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

7.1.1 The Owner shall furnish and pay for surveys and a legal description of the site.

7.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

7.1.3 The Contractor shall secure and pay for other necessary governmental permits, approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after 10 days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Owner's consultant services made necessary thereby, from the payment then or thereafter due the Contractor.

ARTICLE 8 CONTRACTOR

8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

8.1.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Plans and

other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 7.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Owner and Engineer as a request for information in such form as the Owner may require.

- 8.1.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

8.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- 8.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the job site safety thereof unless the Contractor gives timely written notice to the Owner that such means, methods, techniques, sequences or procedures may not be safe.
- 8.2.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

8.3 LABOR AND MATERIALS

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

8.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

8.3.3 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

8.3.4 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Owner and in accordance with a Change Order.

8.4 WARRANTY

The Contractor warrants **for a period of two years after Final Acceptance** to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.5 TAXES

The Owner is a tax exempt entity and no part of any application for payment shall include sales, consumer, use or other similar taxes.

8.6 PERMITS, FEES AND NOTICES

8.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the right of way permit and other permits and governmental fees, and licenses necessary for proper execution and completion of the Work.

8.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner and Engineer, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

8.7 SUBMITTALS

8.7.1 The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

8.7.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

8.8 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

8.9 [LEFT BLANK]

8.10 CLEANING UP

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

8.11 ROYALTIES, PATENTS AND COPYRIGHTS

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

8.12 ACCESS TO WORK

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

8.13 INDEMNIFICATION

8.13.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 8.13.

8.13.2 In claims against any person or entity indemnified under this Paragraph 8.13 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 8.13.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 9 ADMINISTRATION OF THE CONTRACT

9.1 Shellie Duplan (the "Manager") will be Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 17.2.

9.2 The Manager, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Manager will not be required to make exhaustive or continuous on-site inspections to check the

quality or quantity of the Work. The Manager will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 8.2.1.

- 9.3** The Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Manager will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- 9.4** Based on the Manager's evaluations of the Work and of the Contractor's Applications for Payment, the Owner will review and determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 9.5** The Manager will have authority to reject Work that does not conform to the Contract Documents.
- 9.6** The Manager will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- 9.7** The Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Manager will make recommendations to the Owner on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.
- 9.8** Duties, responsibilities and limitations of authority of the Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Manager. Consent shall not be unreasonably withheld.
- 9.9** [LEFT BLANK]
- 9.10 CLAIMS AND DISPUTES**
 - 9.10.1** Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Manager but excluding those arising under Paragraph 15.2, shall be referred initially to the Manager for decision. Such matters, except those relating to aesthetic effect and

except those waived as provided for in Paragraph 9.11 and Subparagraphs 14.53 and 14.5.4 shall, after initial decision by the Manager or 30 days after submission of the matter to the Manager, be subject to the institution of legal or equitable proceedings by either party.

9.10.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the Manager, by mediation or by arbitration.

9.10.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise.

9.11 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 19. Nothing contained in this Paragraph 9.11 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 10 SUBCONTRACTORS

10.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

10.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Manager the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner or Manager has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably

capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

- 10.3** Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Manager, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

ARTICLE 11 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 11.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Paragraph 9.10.
- 11.2** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.
- 11.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

ARTICLE 12 CHANGES IN THE WORK

- 12.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Manager, or by written Construction Change Directive signed by the Owner and Manager.
- 12.2** The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit.
- 12.3** The Manager will have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.
- 12.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted.

ARTICLE 13 TIME

- 13.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 13.2** The date of Substantial Completion is the date certified by the Manager in accordance with Subparagraph 14.4.2.
- 13.3** If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Manager determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Manager may determine, subject to the provisions of Paragraph 9.10.

ARTICLE 14 PAYMENTS AND COMPLETION

14.1 APPLICATIONS FOR PAYMENT

- 14.1.1** Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Manager.
- 14.1.2** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

14.2 CERTIFICATES FOR PAYMENT

- 14.2.1** The Manager will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Manager determines is properly due, or notify the Contractor and Owner in writing of the Manager's reasons for withholding certification in whole or in part as provided in Subparagraph 14.2.3.
- 14.2.2** The issuance of a Certificate for Payment will constitute a representation by the Manager to the Owner, based on the Manager's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Manager's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Manager. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- 14.2.3** The Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Manager's opinion the representations to the Owner required by Subparagraph 14.2.2 cannot be made. If the Manager is unable to certify payment in the amount of the Application, the Manager will notify the Contractor and Owner as provided in Subparagraph 14.2.1. The Manager may also withhold a Certificate for Payment or, because of

subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 8.2.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

14.2.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

14.3 PAYMENTS TO SUBCONTRACTORS

14.3.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

14.3.2 Neither the Owner nor Manager shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

14.3.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

14.4 SUBSTANTIAL COMPLETION

14.4.1 Substantial Completion is the stage in the progress of the Work when all of the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

14.4.2 When the Manager determines that the Work is substantially complete, the Manager will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of final payment for this Agreement unless otherwise provided in the Certificate of Substantial Completion. Upon the issuance of the Certificate of Substantial Completion, the Manager will submit it to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate

14.5 FINAL COMPLETION AND FINAL PAYMENT

14.5.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Manager will promptly make such inspection and, when the Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Manager will promptly issue a final Certificate for Payment stating that to the best of the Manager's knowledge, information and belief, and on the basis of the Manager's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Manager's final Certificate for Payment will constitute a further representation that conditions stated in Subparagraph 14.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

14.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a

bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

14.5.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

14.5.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

15.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein; and
- .3 other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 15.1.2 and 15.1.3, except for damage or loss attributable to acts or omissions of the Owner or Manager or by anyone for whose acts

either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 8.13.

15.2 HAZARDOUS MATERIALS

15.2.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Manager in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 12 of this Agreement.

15.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Manager, Manager's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 15.2.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

15.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 16 INSURANCE

16.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by

a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

16.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

ARTICLE 17 CORRECTION OF WORK

- 17.1** The Contractor shall promptly correct Work rejected by the Manager or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.
- 17.2** In addition to the Contractor's obligations under Paragraph 8.4, if, within **two years** after the date of final payment made hereunder or after the date for commencement of warranties established under Subparagraph 14.4.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the **two-year** period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.
- 17.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 7.3., and shall be entitled to charge the al reasonable costs of any such correction to the Contractor who shall promptly pay the same to the Owner.
- 17.5** The **two-year** period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other.

18.2 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

18.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Manager timely notice of when and where tests and inspections are to be made so that the Manager may be present for such procedures. The Contractor shall bear costs of tests, inspections or approvals.

18.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

As between Owner and Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued:

- .1 not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion;
- .2 not later than the date of issuance of the final Certificate for Payment for acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to the issuance of the final Certificate for Payment; and
- .3 not later than the date of the relevant act or failure to act by the Contractor for acts or failures to act occurring after the date of the final Certificate for Payment.

ARTICLE 19 TERMINATION OF THE CONTRACT

19.1 TERMINATION BY THE CONTRACTOR

If the Manager fails to recommend payment for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Manager, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project.

19.2 TERMINATION BY THE OWNER

19.2.1 The Owner may terminate the Contract if the Contractor:

- .1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

19.2.2 When any of the above reasons exists, the Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials for which Owner has paid, and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

19.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 19.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

19.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the

Manager, upon application, and this obligation for payment shall survive termination of the Contract.

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

EXHIBIT B
SPECIAL CONDITIONS

Re: Buffalo Mountain Metropolitan District ("Owner") and **Contractor** ("Contractor")
Contract dated _____**2020**.

1. Special Conditions Control, Priority. The terms in these Special Conditions shall supersede any conflicting terms of the Contract, including conflicting terms in the General Provisions, other Special Conditions, Supplementing Conditions, and any Contract Documents, but only to the extent of the conflict. In the event of a conflict between terms, the provision most favorable to the Owner, as determined by the Owner, shall control.
2. Retainage. Retainage is required. The retainage amount will be 5% of the Contractor's pay requests properly allocable to completed Work until 100% of the Work is done.
3. Notice of Final Payment. The Owner shall publish a "notice of final payment" in a legal newspaper at least in the county in which the Work is performed prior to making final payment to the Contractor. This notice of final payment advertises the date, time, and place when final payment will be made and is intended to alert subcontractors so they may present any claims for unpaid amounts to the Owner. The final payment procedure typically delays the final payment made to the Contractor of the retainage amount (or, as applicable, the retainage amount less subcontractor claims and costs that are offset against the retainage by Owner). Notwithstanding anything in the Contract Documents to the contrary, final payment shall not be made to the Contractor until the Owner has complied with Section 38-26-107, C.R.S. and all claims, if any, have been resolved to the satisfaction of the Owner.
4. Prompt Payment of Subcontractors. The Contractor shall pay its subcontractors promptly from amounts that it receives from the Owner as required by Colorado laws concerning local government construction contracts.
5. Payment of Subcontractors by Owner. In the event that Contractor fails to pay one or more of its subcontractors promptly from amounts that it receives from Owner pursuant to paragraph five (5) of these Special Conditions, Owner may, in its sole discretion, elect to pay the amounts due to unpaid subcontractors if Owner gives Contractor notice ten (10) days before making such payment. If Owner elects to pay one or more subcontractors, Owner may deduct the amount of such payment from amounts due to Contractor by Owner.
6. Appropriations and Change Orders.
 - (a) The amount of money appropriated by the Owner for the Work to be performed

under this Contract is equal to or in excess of the contract amount.

- (b) No change order or other form of order or directive shall be issued by the Owner requiring other compensable Work to be performed, which Work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made or unless such Work is covered under a remedy-granting provision of the Contract as defined by Section 24-91-103.6(4), C.R.S.
7. Periodic Reimbursement; Additional Compensable Work. Pursuant to Section 24-91-103.6(2)(c), C.R.S., for any form of order or directive by Owner that requires additional compensable work to be performed by Contractor other than a finalized change order, Owner shall reimburse the Contractor for Contractor's actual costs on a periodic basis [i.e., monthly, unless the period of time is otherwise defined in the contract] for all additional directed work performed by Contractor until a change order is finalized; provided, however, that in no instance shall a periodic reimbursement be required before Contractor has submitted an estimate of cost to Owner for the additional compensable work to be performed.
8. Or-Equal Permitted if Approved. In all cases where the plans, specifications, drawings, or any other contract documents specify a particular manufacturer for a given item, the Contractor may propose an equivalent item to the item specified, but shall demonstrate to the satisfaction of the Owner that such alternate item is in fact equivalent to the specified item.
9. Illegal Alien Workers. Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract or contract with a sub-contractor who knowingly employs or contracts with an illegal alien to perform work under the Contract. Execution of the Contract or these Special Conditions by Contractor shall constitute a certification by Contractor that it does not knowingly employ or contract with an illegal alien and that the Contractor has participated or attempted to participate in the E-Verify Employment Verification Program administered by the United States Department of Homeland Security, ("E-Verify Program" – f/k/a "Basic Pilot Program") in order to verify that it does not employ any illegal aliens.
 - a. Contractor shall comply with the following:
 - (i) Contractor shall apply to participate in the E-Verify Program every three months until all requirements under this Contract are completed or until Contractor is accepted into the E-Verify Program, whichever occurs earlier.
 - (ii) Contractor shall not utilize the E-Verify Program procedures to independently undertake pre-employment screening of job applicants.

- (iii) Contractor shall require each subcontractor to certify that subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Contract. If Contractor obtains actual knowledge that a subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, Contractor shall be required to:
 - a. Notify the subcontractor and the Owner within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the subcontractor if within three (3) days of receiving notice from the Contractor, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
 - (iv) The Contractor shall comply with any reasonable request by the Department of Labor and Employment ("Department") made in the course of an investigation by the Department.
 - b. If Contractor violates any provision of paragraph eleven (11) of these Special Conditions, then Owner may terminate the Contract immediately and Contractor shall be liable to Owner for actual and consequential damages of Owner resulting from such termination and Owner shall report such violation by Contractor to the Colorado Secretary of State as required by law.
- 10. Headings for Convenience Only. The headings or titles used herein are for convenience of reference only and do not define or limit the scope of any provision hereof.
- 11. Lien Releases. Lien releases in a form reasonably acceptable to Owner, signed by the Contractor and each subcontractor providing \$1,000 or more of labor or materials, shall be required prior to final payment unless this requirement is waived, in writing, by Owner's Engineer or Architect for a specific subcontractor.
- 12. Warranty Acknowledgement. A Warranty Acknowledgement letter from the Contractor, in the form provided below shall be required prior to final payment:

WARRANTY
ACKNOWLEDGEMENT

Date: _____

Project Title: 2020 BMMD Sewer Improvements Project

FROM: Contractor

TO: Buffalo Mountain Metropolitan District

The undersigned warrants all its work performed in connection with the above project to be free from all defects in material and workmanship for a period of (2) years from the date of probationary acceptance of the project by Buffalo Mountain Metropolitan District and agrees to remedy all defects arising within that period at its expense.

The term defects shall not be construed as embracing damage arising from misuse, negligence, Acts of God, normal wear and tear or failure to follow operating instructions.

Contractor

Contractor's Signature

Print Contractor's Name

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ as _____ of _____, Contractor.

Notary Public

13. No Waiver of Immunity. Nothing in this Agreement shall be deemed or construed to be a waiver by Owner of any provision or limitation of liability contained in the Colorado Governmental Immunity Act.

14. Changes in Law. The Owner and Contractor acknowledge that there may be changes in the law concerning retainage, final payment, or other matters addressed by these Special Conditions. Owner and Contractor agree that any such change in law shall be deemed to impair the terms of these Special Conditions and the Contract, and that therefore, the terms of the Special Conditions and Contract shall control over the terms of the change in law; unless the failure to comply with the change in law would result in criminal liability for either Owner or Contractor.

OWNER:

BUFFALO MOUNTAIN METROPOLITAN DISTRICT

By: _____

Its: _____

CONTRACTOR:

By: _____

Its: _____