

**BIG HORN COUNTY
BOARD OF COUNTY
COMMISSIONERS**

121 3rd St W
Room 301
Hardin, MT 59034



**BIG HORN COUNTY BOARD OF COUNTY
COMMISSIONERS MINUTES
July 3, 2025
9:30 AM**

Members

Lawrence Big Hair, Presiding Officer
George Real Bird III, Member
Larry Vandersloot, Member

1. Call to Order

Commissioner Big Hair, Presiding Officer calls meeting to order.

2. Roll Call

Commissioner Big Hair, Presiding Officer, and Commissioner Vandersloot, member were all in attendance.

3. Claim Approvals

Commissioner Vandersloot entertained a motion to approve claims 1367 and 1368. The motion was seconded by Commissioner Big Hair and passed unanimously.

4. Approve Minutes and Supporting Documents

Commissioner Vandersloot entertained a motion to approve minutes June 26, 2025. The motion was seconded by Commissioner Big Hair and passed unanimously.

5. Personnel/Legal

6. Old Business

7. New Business

TCA Contract

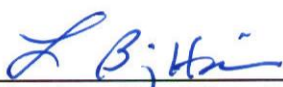
Commissioner Vandersloot entertained a motion to approve TCA contract for the bridge replacement on the sawyers loop. The motion was seconded by Commissioner Big Hair and passed unanimously.

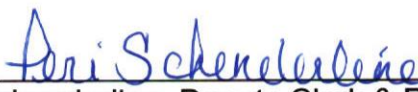
8. Public Comments

9. Discussion

10. Adjourn

There being no other business, the board adjourned.

Approved: 
Lawrence Big Hair, Presiding Officer

Attest: 
Peri Schenderline, Deputy Clerk & Recorder

CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Big Horn County, a political subdivision of Montana (Owner) and TCA Group, Inc (Contractor). Owner and Contractor hereby agree as follows:

ARTICLE 1—THE WORK

1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The **Contractor** shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
 - 1. Sawyer Loop Bridge, which consists of the following:
 - a. *Supply HP10x42 piles to limits indicated on construction drawings*
 - b. *Drive HP10x42 piles to limits indicated on construction drawings*
 - c. *Construct concrete abutments, which is described as follows:*
 - 1) *Supply labor, materials and equipment to form concrete*
 - 2) *Supply labor and equipment to place rebar and concrete*
 - 3) *Supply labor and equipment to strip forms for abutments*
 - d. *Set prefabricated steel bridge, backwall, and wingwalls*
 - e. *Erect prefabricated steel bridge, backwall, and wingwalls*
 - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located on Sawyer Loop where it crosses Williams Coulee, approximately 2 miles south of Hardin, MT.
- C. The **Owner** shall perform the following work:
 - 1. *Furnish and place riprap*
 - 2. *Prepare subgrade below concrete abutment*
 - 3. *Supply rebar*
 - 4. *Supply concrete for abutments*
 - 5. *Supply and place earthwork, which includes bridge end backfill, roadwork, bridge surfacing*
 - 6. *Erect bridge rail, if not attached to prefabricated steel bridge when delivered*

ARTICLE 2—CONTRACT DOCUMENTS

2.01 *Intent of Contract Documents*

- A. It is the intent of the Contract Documents to describe a functionally complete Project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with Owner and Engineer. This Contract constitutes the entire agreement between Owner and Contractor, and supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work under the Contract Documents. During the performance of the Work and until final payment, Contractor and Owner shall submit to Engineer all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- C. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media versions) prepared by Engineer or its consultants.
- D. *Contract Price or Contract Times:* References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.
- E. Nothing in the Contract Documents creates any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity.

2.02 *Contract Documents Defined*

- A. The Contract Documents consist of the following documents:
 - 1. This Contract for Construction of a Small Project.
 - 2. Performance bond.
 - 3. Payment bond.
 - 4. Drawings as listed on the Drawing Sheet Index.
 - 5. Exhibits to this Contract (enumerated as follows):
 - a. Prefabricated steel bridge shop drawings by Contech, ES
 - b. Geotechnical report by SK Geotechnical
 - 6. The following which may be delivered or issued on or after the Effective Date of the Contract:

- a. Notice to Proceed (EJCDC® C-550).
- b. Work Change Directives (EJCDC® C-940).
- c. Change Orders (EJCDC® C-941).
- d. Field Orders (EJCDC® C-942).

ARTICLE 3—ENGINEER

3.01 Engineer

- A. The Engineer for this Project is Adam Hagel, PE with Stahly Engineering, Inc.

ARTICLE 4—CONTRACT TIMES

4.01 Contract Times

- A. The Work will be substantially complete on or before August 22, 2025 and completed and ready for final payment on or before September 2, 2025.

4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay in completion (but not as a penalty) Contractor shall pay Owner \$100 for each day that expires after the Contract Time for substantial completion.

4.03 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times or Contract Price.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or its subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit it to Engineer for review and comment before starting Work on the Site. Contractor shall modify the schedule in accordance with Engineer's comments.

- B. Contractor shall update and submit the progress schedule to Engineer each month. Owner may withhold payment if Contractor fails to submit the schedule.

ARTICLE 5—CONTRACT PRICE

5.01 *Payment*

- A. Owner shall pay Contractor, in accordance with the Contract Documents, the lump sum amount of \$79,950.00 for all Work.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Bonds*

- A. When Contractor delivers the signed counterparts of the Contract to Owner, Contractor shall also deliver the performance bond and payment bond to Owner. Each bond must be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds must remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.
- B. Upon request, Owner will provide a copy of the payment bond to any person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work.

6.02 *Insurance*

- A. When Contractor delivers the signed counterparts of the Contract to Owner, Contractor shall furnish certificates, endorsements, and any other evidence of insurance requested by Owner. Insurance is to be provided by companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum A.M. Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

- a. *Workers' Compensation and Employer's Liability*

Workers' Compensation	Statutory
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- b. *Commercial General Liability*

General Aggregate	\$	2,000,000
Products - Completed Operations Aggregate	\$	2,000,000
Personal and Advertising Injury	\$	1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$	1,000,000

- c. *Automobile Liability*

Combined Single Limit (Bodily Injury and Property Damage)	\$	1,000,000
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d. *Excess or Umbrella Liability*

General Aggregate	\$ 1,000,000
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- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days after notice has been received by the purchasing policyholder. Within three days of receipt of any such notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.
- C. Automobile liability insurance provided by Contractor will be written on an occurrence basis and provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
- D. Contractor's commercial general liability policy will be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
 2. Blanket contractual liability coverage to the extent permitted by law;
 3. Broad form property damage coverage; and
 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies will include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds will provide primary coverage for all claims covered thereby (including, as applicable, those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance will be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. The coverage afforded must be at least as broad as that of each and every one of the underlying policies. Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an

umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy.

- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 Contractor's Means and Methods of Construction

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of the Work or persons or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday.

7.03 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
- B. Contractor shall notify Owner, the owners of adjacent property, the owners of underground facilities and other utilities (if the identity of such owners is known to Contractor), and other contractors and utility owners performing work at or adjacent to the Site when Contractor knows that prosecution of the Work may affect them; and Contractor shall cooperate with

them in the protection, removal, relocation, and replacement of their property or work in progress.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for everything necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work must be new and of good quality, and be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.05 *Subcontractors and Suppliers*

- A. Just as Contractor is responsible for its own acts and omissions, Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of suppliers and subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work. The Contractor's retention of a subcontractor or supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

7.06 *Licenses, Fees and Permits*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy, unless otherwise provided in the Contract Documents.

7.07 *Laws and Regulations; Taxes*

- A. Contractor shall give all notices required by, and shall comply with, all local, state, and federal laws and regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all resulting costs and losses, and to the fullest extent permitted by law Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all such claims, costs, losses, and damages.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes.

7.08 *Record Documents*

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

7.09 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, will be remedied by Contractor at its expense (except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- E. Contractor shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with laws or regulations.
- F. In emergencies affecting the safety or protection of the Work or persons or property at the Site or adjacent thereto, Contractor shall act to prevent damage, injury, or loss. Contractor shall give Engineer prompt notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.10 *Submittals*

- A. Contractor shall review and coordinate shop drawings, samples, and other submittals with the requirements of the Work and the Contract Documents, and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information. Contractor shall confirm that the submittal is complete with respect to all related data included in the submittal.
- B. Shop drawings and samples must bear a stamp or specific written certification that Contractor has satisfied its obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each shop drawing or sample submittal, Contractor shall give Engineer specific written notification, in a communication separate from the shop drawing or sample, of any variations

that the shop drawing or sample may have from the requirements of the Contract Documents.

- D. Engineer will provide timely review of submittals. Engineer's review and approval of submittals will not extend to the means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs.
- E. Engineer's review of shop drawings and samples will be only to determine if the items covered will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole.
- F. Engineer's review and approval of a separate item in a shop drawing or sample does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer, return the required number of corrected copies of shop drawings, and submit new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

7.11 *Warranties and Guarantees*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its consultants are entitled to rely on Contractor's warranty and guarantee.

7.12 *Correction Period*

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, or other adjacent areas used by Contractor as permitted by laws and regulations, is found to be defective, then Contractor shall promptly correct any such defective Work and repairs, at no cost to Owner.

7.13 *Indemnification*

- A. To the fullest extent permitted by law, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from all losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

ARTICLE 8—OWNER’S RESPONSIBILITIES

8.01 *Responsibilities*

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide the Site and easements required to construct the Project.
- D. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Owner has been informed.
- E. Owner shall furnish copies of any applicable Owner safety programs to Contractor.
- F. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- G. Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or for related safety precautions and programs, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

ARTICLE 9—ENGINEER’S STATUS DURING CONSTRUCTION

9.01 *Engineer’s Status*

- A. Engineer will be Owner’s representative during construction.
- B. Neither Engineer’s authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility, or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, its subcontractors, suppliers, or sureties, or to any employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.
- D. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or for related safety precautions and programs, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10—CHANGES IN THE WORK

10.01 *Authority to Change the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

10.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.03 *Work Change Directive*

- A. A Work Change Directive may be issued to Contractor ordering an addition, deletion, or revision in the Work. A Work Change Directive will not change the Contract Price or Contract Times, but is evidence that the parties expect that the modification ordered or documented by the Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on Contract Price or Contract Times.

10.04 *Field Orders*

- A. Engineer may issue a Field Order to authorize minor changes in the Work, provided that the changes do not involve an adjustment in the Contract Price or Contract Times.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then Contractor shall request such adjustment before proceeding with the Work.

ARTICLE 11—DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.01 *Differing Site Conditions Process*

- A. If Contractor believes that any subsurface or physical condition (including but not limited to utilities or other underground facilities) that is uncovered or revealed at the Site either (1) differs materially from that shown or indicated in the Contract Documents, or (2) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents, then Contractor shall promptly notify Owner and Engineer about such condition. Contractor shall not further disturb such condition or perform any Work in connection with the condition (except with respect to an emergency) until receipt of authorization to do so.

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if Contractor knew of, or should have known of, the existence of the condition prior to entry into the Contract.
- B. After receipt of notice regarding a possible differing subsurface or physical condition, Engineer will promptly:
1. Review the condition in question;
 2. Determine if it is necessary for Owner to obtain additional exploration or tests with respect to the condition;
 3. Determine whether the condition falls within one of the two differing site condition categories described in Paragraph 11.01.A.;
 4. Obtain any pertinent cost or schedule information from Contractor;
 5. Advise Owner of Engineer's findings, conclusions, and recommendations, including recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question, the need for any change in the Drawings or Specifications, and possible Contract Price or Contract Times adjustments.
- C. After receipt of Engineer's findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part, and granting any equitable adjustment in Contract Times or Contract Price to which Contractor is entitled.

ARTICLE 12—CLAIMS AND DISPUTE RESOLUTION

12.01 *Claims Process*

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim must be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give notice to the other party of the intent to submit the dispute to a court of competent

jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 13—TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.01 *Tests and Inspections*

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for observation, inspection, and testing. Contractor shall provide proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. Except as otherwise provided in the Contract Documents, Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required: (1) by the Contract Documents; (2) by codes, laws, or regulations; (3) to attain Owner's and Engineer's acceptance of materials or equipment; and (4) to obtain Engineer's approval prior to purchase of materials, mix designs, or equipment.
- D. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense.

13.02 *Defective Work*

- A. Contractor warrants that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's warranty and guarantee on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14—PAYMENTS TO CONTRACTOR

14.01 *Progress Payments*

- A. Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form acceptable to Engineer. Lump sum items will be broken into units that allow for measurement of Work in progress. For unit price work, the unit price breakdown in Article 5 will be used as the schedule of values.

14.02 *Applications for Payments*

- A. Contractor shall submit signed applications for payment to Engineer monthly, in a form acceptable to the Engineer. Contractor shall provide supporting documentation required by the Contract Documents. Owner will pay for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application must include an affidavit of Contractor stating that all previous progress payments have been applied to discharge Contractor's obligations associated with the prior applications for payment.

14.03 *Retainage*

- A. The Owner shall retain 5% of each progress payment until the Work is substantially complete.

14.04 *Review of Applications*

- A. Within 10 days after receipt of each application for payment, Engineer will either recommend payment and present the application for payment to Owner, or return the application for payment to Contractor indicating Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and may resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner, or any incurred costs, losses, or damages, on account of Contractor's conduct in the performance of the Work; for defective Work; or for liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.05 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

14.06 *Substantial Completion*

- A. When Contractor considers the Work ready for its intended use, Contractor shall request that Engineer issue a certificate of substantial completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's request, Engineer will inspect the Work with Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner of the reasons for Engineer's decision.
- C. If Engineer considers the Work substantially complete, or upon resolution of all reasons for non-issuance of a certificate, Engineer will deliver to Owner and Contractor a certificate of substantial completion that will fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.07 *Final Inspection*

- A. Upon notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor, and will notify Contractor of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work and remedy such defects.

14.08 *Final Payment*

- A. Contractor may make application for final payment after satisfactorily completing all Work, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, and other documents.
- B. The final application for payment must be accompanied (except as previously delivered) by:
 - 1. All documentation called for in the Contract Documents;
 - 2. Consent of the surety to final payment;
 - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
 - 4. A list of all pending claims; and
 - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

14.09 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding claim, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a claim.

ARTICLE 15—SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or Contract Times, to the extent directly attributable to any such suspension.

15.02 *Owner May Terminate for Cause*

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety 10 days' notice that Owner is considering a declaration that Contractor is in default and the termination of the Contract, Owner may proceed to:
 - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
 - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.
- F. If Contractor has provided a performance bond, the provisions of that bond will govern over any inconsistent provisions of Paragraph 15.02.

15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for the following, without duplication of any items:
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, less any set-offs, and including fair and reasonable sums for overhead and profit on such Work;
 - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits, or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 60 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 16—CONTRACTOR'S REPRESENTATIONS

16.01 *Contractor Representations*

- A. Contractor makes the following representations when entering into this Contract:
1. Contractor has examined and carefully studied the Contract Documents.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 4. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 17—MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of notice to Owner, Engineer, or Contractor, such notice must be in writing, and delivered in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

17.02 *Cumulative Remedies*

- A. The duties and obligations expressly imposed by this Contract, and the rights and remedies expressly available to the parties under this Contract, are in addition to, and are not to be construed in any way as a limitation of, any duties, obligations, rights, or remedies otherwise imposed or available by laws or regulations, by warranty or guarantee, or by other provisions of the Contract.

17.03 *Limitation of Damages*

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.04 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

17.05 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

17.06 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or entering into the Contract.

17.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

The Effective Date of the Contract is (Date).

Owner:

Big Horn County
(typed or printed name of organization)

By: L Bighair
(individual's signature)

Date: 7/13/25
(date signed)

Name: Lawrence Big Hair
(typed or printed)

Title: Presiding officer
(typed or printed)

Attest: Peri Schunderline
(individual's signature)

Title: Deputy Clerk + Recorder
(typed or printed)

Address for giving notices:

Po Box 908
Hardin, MT 59034

Designated Representative:

Name: Aj Espinoza
(typed or printed)

Title: Road Superintendent
(typed or printed)

Address:

Po Box 908
Hardin, MT 59034

Phone: 406-679-0516

Email: aespinosa@bighorncountymt.gov
(Agreement.)

Contractor:

TCA Group Inc.
(typed or printed name of organization)

By: Greg Benjamin
(individual's signature)

Date: 7/2/25
(date signed)

Name: Greg Benjamin
(typed or printed)

Title: President
(typed or printed)

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Darby Wells
(individual's signature)

Title: Darby Wells, Accounting
(typed or printed)

Address for giving notices:

2223 Montana Ave. Ste. 201
Billings, MT 59101

Designated Representative:

Name: Spencer Jovick
(typed or printed)

Title: Project Superintendent
(typed or printed)

Address:

2223 Montana Ave. Ste. 201
Billings, MT 59101

Phone: 406-231-9576

Email: sjovick@tcagroup.net, cc dwells@tcagroup.net

License No.: CR 264893
(where applicable)

State: Montana