

Agenda Item: IV. i.

Meeting Date: July 13, 2020

Subject: Professional Services Agreement with Galloway

Staff Member: A.J. Euckert, City Manager

i. Resolution 20-61, approving a Professional Services Agreement with Galloway for the Colorado Blvd. survey project.

Background: At a previous meeting, Council approved the use of Underground Funds for the Colorado Blvd. street light project. In order to place the street lights outside of the ultimate Right-Of-Way (ROW), a survey is required to locate any existing utilities, lines, and underground features so the lights can be installed in the right location.

Recommended Action: Consideration and approval of Resolution 20-61, approving a Professional Services Agreement with Galloway for the Colorado Blvd. survey project.

RESOLUTION NO. 20-61

**A RESOLUTION APPROVING AN AGREEMENT WITH GALLOWAY FOR THE
SURVEY OF COLORADO BLVD.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,
COLORADO:**

Section 1. The Agreement by and between the City of Dacono and Galloway is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution. The City Council hereby authorizes the expenditure of the funds as necessary to meet the terms and obligations of the Agreement.

Section 2. The Mayor is hereby authorized to sign the Agreement and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 13th day of July, 2020.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

July 8, 2020

City of Dacono
AJ Euckert
512 Cherry Street
Dacono, CO 80514

RE: Colorado Blvd. Right of Way Determination and Survey Dacono CO. Professional Services Proposal

Dear Mr. Euckert:

Galloway is pleased to provide our Professional Services Agreement (“Agreement”) to the City of Dacono. The requested scope of services and associated fees are outlined in attached Professional Services Agreement and is intended to cover Galloway’s survey services for this project.

Galloway is a full-service engineering, architecture and planning company that has provided comprehensive land development services since 1982 and is licensed in 46 states. With offices in Colorado, Utah and California, we provide all major services under one roof and have the capabilities necessary to successfully manage a project from planning through construction completion. Galloway’s services include due diligence; land development consulting; site planning; surveying; civil, mechanical, electrical and structural engineering; architecture; landscape architecture; site lighting analysis; commissioning; and construction contract administration. Our diverse client base includes local, regional and national developers, builders and retailers. We pride ourselves on providing quality, cost-effective, and reliable services and building enduring client relationships.

If the general terms of this proposal are acceptable, Galloway is prepared to execute this Agreement, or upon review and mutual agreement of the contractual conditions, the Client’s Agreement. In either case, the attached Scope of Services, and any mutually agreeable revisions thereto, would be incorporated into said Agreement.

We appreciate the opportunity to submit our professional services proposal to you. Galloway strives to provide a superior level of service that reflects our dedication to timely and cost-effective projects, exceptional communication and the highest-quality deliverables. We are committed to your project’s success and look forward to working with you. If you have any questions, please feel free to contact me at (970) 800-3300. Thank you for considering Galloway!

Sincerely,
GALLOWAY & COMPANY, INC.



Frank A. Kohl, Associate
Frankkohl@GallowayUS.com

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (hereinafter referred to as "Agreement") is made as of July 8, 2020, between City of Dacono (hereinafter referred to as "Client"), and Galloway & Company, Inc., a Colorado Corporation, and its Subsidiaries (collectively hereinafter referred to as "Galloway"), and jointly referred to as the "Parties." The agreement is binding upon the Parties, their successors and assigns. The Client understands the terms and conditions set forth and willingly enters into this Agreement.

The terms of this Agreement shall cover all services performed by Galloway for the Client prior to the execution of this Agreement, if any. Services not specifically identified in the Scope of Services presented herein are excluded from this Agreement. Deviations from the Scope of Services, whether Client-driven or through the agency review and approval processes, will be justification for amendment to this Agreement.

The Schedule of Rates and Contractual Conditions attached are incorporated by this reference.

SUBJECT PROPERTY/PARCEL(S) FOR SURVEY SERVICES

Colorado Blvd. from Hwy 52 south to a line One Quarter Mile North of WCR 6.
(Approximately 3 $\frac{3}{4}$ miles)

SCOPE OF SERVICES

Right of Way Research and Determination

Galloway will work with the City of Dacono staff to determine the Right of way for Colorado Blvd. This effort will include review of Annexation and Plat maps, records of Weld County, Title reports and City documents. (See Exhibit A-1 area highlighted in red)

Right of Way Survey

Based on the findings of our research, Galloway will conduct a field survey. Controlling monuments for the right of way will be searched for and found monuments will be tied to the City Datum. (See Exhibit A-1 area highlighted in red) NOTE: This is not a boundary survey. Found monuments will be used to reference and control record right of way information.

Right of Way Map

Using the surveyed and record information, Galloway will create a right of way map in an Autocad format for use in determining the placement of the light poles.

Project Coordination

Galloway will coordinate with the title company for title reports and acquiring deeds for the abutting parcels. Fees associated with the title company will be handled as a pass-through expense and invoiced to the client.

ASSUMPTIONS AND CLARIFICATIONS

- In this proposal it's assumed that adequate monumentation necessary to determine the right of way will be found on or directly adjacent to the subject property. If adequate monumentation is not found, we will contact the Client prior to proceeding with the

survey. If additional research and field work is required to reestablish the right of way, additional fees may apply.

- If conflicting boundary evidence is encountered, the Client will be notified prior to proceeding with the survey. Resolving the boundary issues will be viewed as additional services and billed on a Time and Materials (T&M) basis.
- The fee for this proposal includes addressing one (1) set of Client comments regarding revisions, clarification or edits. It is assumed Galloway will receive all comments from all involved parties at the same time to be addressed at one (1) time. If additional comments are received or as otherwise noted or requested revisions extend beyond the aforementioned items or scope, additional fees shall apply, and the request will be addressed on a Time and Materials (T&M) basis.
- Client will provide or obtain all necessary permissions for access to all portions of the abutting property or adjoining properties necessary to complete the field effort of the survey.
- This scope is limited to the items listed above. Additional scope items requested by the Client may include additional fees.
- The property or parcel(s) to be surveyed for this effort is limited to that property or parcel(s) listed above.
- Commencement of work will not begin until this agreement is signed and received by both parties.

SPECIFIC EXCLUSIONS

- This is not a boundary survey, no monuments will be set.
- Extending the survey to include the Aliquot break down of adjoining sections
- All items related to the vertical aspects of the site.
- Any additional scope items not specifically listed above
- Zoning research or designations
- Determination of rights of use of any features/easements/trails/roads or any others
- Easement research of and not of record
- Any copies of survey notes/sketches/point list or other survey related items, unless agreed upon via written correspondence
- Revisions deemed beyond the limits or intent of this scope
- Any forms/letters/spreadsheets or drawings not listed above

CLIENT RESPONSIBILITIES

- Provide supporting documents prior to commencement of services
- Provide necessary permissions and access to the site and abutting properties.

DELIVERABLES

Galloway will prepare a Autocad drawing of the subject right of way. Galloway will provide the client with a PDF of the final survey signed and sealed by a Professional Land Surveyor licensed in the State of Colorado. The PDF will be a “to scale” depiction at a size of 24” x 36”.

Galloway standard base files

SCHEDULE

Galloway Survey can commence work immediately upon receiving the signed agreement and a written Notice to Proceed and will anticipate delivery of a draft survey for your review within 4 weeks of the Notice to Proceed.

It is understood that the timing for this survey is important. Galloway will make all reasonable efforts to complete the survey in the time frame noted, however outside factors may have influence on the schedule such as but not limited to weather, access permissions or other unforeseen circumstances. If a circumstance or situation occurs that may impact the delivery schedule, Galloway will notify the client to either resolve the situation or determine a new delivery schedule.

COMPENSATION

The Scope of Services provided herein will be provided on a time and materials (T&M) basis pursuant to the Schedule of Rates in effect at the time services are rendered and expenses incurred. The estimated T&M fee of **\$21,850** is based upon our understanding of the project scope at this time and should not be construed as a not-to-exceed amount unless otherwise noted. A copy of Galloway’s current Schedule of Rates is incorporated herein as Exhibit B.

Galloway invoices on a fixed fee and/or time and material (T&M) basis. Fixed fee scope items are invoiced on a percent-complete basis, while T&M items are invoiced pursuant to the Schedule of Rates in effect at the time services are rendered and expenses incurred. A copy of the current Schedule of Rates is attached herein. Changes to the Scope of Services and compensation shall be identified in a Service Authorization addendum and commenced only upon the Client’s execution of the Service Authorization. T&M fees presented herein are estimates and should not be construed as not-to-exceed amounts. Reimbursable expenses shall be invoiced at 1.10 times the direct out-of-pocket expense. These reimbursable expenses include, but are not limited to, permit fees, review and recording fees, reasonable travel costs, communication costs, equipment and facility rentals, subconsultant fees, reproduction costs, and courier and shipping fees. Invoicing is performed monthly with payment due net 30 days from the date of invoice. Amounts unpaid 30 days after the invoice date shall include a service charge of 1.5% per month. Collection charges, including attorney’s fees and court costs are payable by Client in the event of late payment. Final payment is required prior to the release of any signed and stamped drawings, reports, or other Instruments of Service, as defined herein under Contractual Conditions.

It should be noted that the fee estimate is based upon Galloway’s understanding of the project scope at the time that the estimate is provided. The fee estimate is also based upon a standard performance schedule for services. Compressed schedules will increase the fee estimate. Unforeseen conditions or necessary revisions may require Galloway to submit a Scope of

City of Dacono
Colorado Blvd. Right of Way
July 8, 2020

Services addendum and obtain approval from Client prior to proceeding with the modified scope. Galloway's Schedule of Rates is subject to change.

Galloway is hereby authorized by Client to proceed with the above referenced Scope of Services as set forth in this Agreement between Galloway and Client.

ACCEPTED BY

Galloway & Company, Inc.

City of Dacono

Signature: _____

Signature: _____

Print Name: _____

Print
Name: _____

Date: _____

Date: _____

Title: _____

Title: _____

2020 RATE TABLE

CATEGORY	HOURLY RATE
Surveying	
Survey Project Manager	\$135 - \$170
Project Surveyor	\$110 - \$140
Survey Party Chief – Office	\$87
Senior Survey Party Chief – Office (PLS)	\$145
Instrument Operator – Office	\$75
1-Person Field Crew	\$130†
2-Person Field Crew	\$170†
1-Person PLS Crew	\$160†
2-Person PLS Crew	\$195†
1-Person Construction Staking Crew	\$135†*
2-Person Construction Staking Crew	\$180†*
2-Person PLS Construction Staking Crew	\$205†*
1-Person, 1 UTV	\$175†
2-Person, 2 Rover	\$200†
2-Person, 2 Rover & UTV	\$250†
1-Person Utility Locating Services	\$115†
1-Person High Definition Scanning	\$200†
2-Person High Definition Scanning	\$300†
3-Person Field Crew – Instrument Operator	\$0
3-Person Field Crew – Party Chief, Survey	\$210†
3-Person Field Crew – Party Chief, Construction	\$220†*
CADD	
Survey Technician (Survey-Based CADD Calculations)	\$95 - \$120
CADD Technician	\$105 - \$130
CADD Designer	\$115 - \$135

† This rate includes mileage for projects located within 30 miles of Galloway’s local office.

* Galloway crew rates for construction staking are inclusive of materials and equipment used for the project.

CONTRACTUAL CONDITIONS

The following conditions are necessary for completion of the Scope of Services provided herein, or in subsequent Service Authorizations, in a timely and orderly manner and within the rates set forth in the applicable Schedule of Rates as defined by this Agreement under Compensation. For the purpose of this Agreement, designs, drawings, reports, calculations, specifications, electronic data and similar services and deliverables in either electronic or hard copy form are the "Instruments of Service."

A. Standard of Care: Services provided by Galloway under this Agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances in this geographic area.

B. Subcontractors: Galloway shall not subcontract any part of its services under this Agreement without first providing notice to Client. Client consents to any subcontractor or subconsultant listed in the Scope of Services. Galloway shall obligate any subcontractor to agree to compliance with all applicable provisions of this Agreement. Nothing contained in any subcontract shall create a contractual relationship between Client and any such subcontractor.

C. Reuse of Documents:

1. Client acknowledges Galloway's Instruments of Service, prepared by Galloway and its subconsultants are for use solely on the Project. Galloway and its subconsultants, as authors and owners of their respective Instruments of Service, retain all common law, statutory and other reserved rights, including copyrights. Distribution of Instruments of Service for regulatory or other Project purposes is not a publication in derogation of the reserved rights.
2. Upon execution of this Agreement, and so long as Client is not in default of its obligations to Galloway, Galloway grants Client a nonexclusive license (the "License") to reproduce all finished Instruments of Service solely for use on the Project, subject to the following: (a) if Client is in default of this Agreement, including instances where Galloway terminates the Agreement for nonpayment, the License is terminated without the necessity of further action on the part of the Parties; (b) if Client terminates this Agreement for Galloway's default (or for Client's convenience and Client is not in default of its obligations to Galloway), the License is terminated without the necessity of further action on the part of the parties and is replaced by a nonexclusive license permitting Client, subject to the other provisions of this Agreement, to authorize properly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. Galloway shall be awarded damages for Client's use of the Instruments of Service if it is later determined by an authority with competent jurisdiction that Galloway was not in default. Galloway retains the right to use, sell and/or modify any databases developed and/or modified in performing its services.
3. The Licenses granted are not assignable without Galloway's prior written consent, and no License or right is granted or implied under this Agreement, except as provided above. Use of Instruments of Service after termination of the Agreement or upon suspension or completion of the Project are at Client's risk and without liability to Galloway, and Client agrees to indemnify, defend and hold Galloway harmless from any and all claims, damages, losses, liabilities and expenses, including attorney fees and expert and consulting fees, arising out of or resulting from such use.

D. Excluded Services: Services not expressly identified in writing in a Service Authorization applicable to this agreement are excluded from the scope of Galloway's services. Client expressly agrees that Galloway has no responsibility to perform such services including but not limited to utility locates that may be required pursuant to C.R.S. 9-1.5-101 et seq. and/or utility quality level A locates as defined by the Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data as published by the American Society of Civil Engineers, such as ASCE 38 and/or any predecessor or subsequent statutes or standard guidelines. All utility locate costs that are required pursuant to C.R.S. 9-1.5-101 and/or utility quality level A as defined by the Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data as published by the American Society of Civil Engineers, which are not expressly included in Galloway's Scope of Services, shall only be completed at the request of Client. Client agrees that any such utility locates will be an added cost to the compensation defined in this Agreement and at Client's sole expense.

E. Additional Services: Client and Galloway agree that there may be circumstances beyond their control, which are unforeseen and that may arise during the project. These changes may require changes to the Scope of Services and Compensation. The additional services shall be invoiced per the terms of this Agreement.

F. Construction Contract Administration: If Client retains Galloway to provide construction contract administration of specific portions of construction work, Galloway will report its professional opinions and observations to Client. Galloway will make periodic observations of construction at intervals agreed to herein to become generally familiar with the construction work, to keep Client informed about the observable work, and to attempt to determine whether the work is in general conformance with the contract documents. This is not a warranty from Galloway that the work is without defect. These periodic observations shall not be construed as exhaustive or continuous inspections. Galloway shall not be responsible for contractor's means, methods, techniques, sequences, procedures, or safety programs since these are exclusively the responsibility of the contractor and because Galloway is neither qualified nor licensed to be a contractor. Nothing herein shall relieve the contractor of responsibility for the quality of its work or impose liability upon Galloway for the quality or timeliness of that work.

G. Insurance: Galloway shall maintain during the term of this Agreement insurance as set forth in Exhibit D, Schedule of Insurance.

H. Limitations:

1. Galloway agrees to indemnify and save Client harmless from any loss, cost, or expense, including reasonable attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Galloway in connection with Galloway's professional services. Client agrees to indemnify and save Galloway harmless from any loss, cost, or expense, including attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Client in connection with the Project. If the negligence of both Galloway and Client is the cause of such damage or injury, the loss, cost, or expense shall be shared between Galloway and Client in proportion to their relative degrees of negligence and the right of indemnity shall apply for such proportion.
2. It is intended that the performance of Galloway's services shall not subject the personnel of either party, including employees, officers, directors, members, managers, and shareholders (collectively, "Personnel"), to any personal legal exposure for any risk associated with the Project. Each party agrees that any claim, demand or suit shall be made only against a party and not against any of its Personnel.
3. Client and Galloway agree that notwithstanding any other provision in this Agreement to the contrary (including any other provision with the same or similar limiting language), to the fullest extent permitted by law: (a) the total liability in the aggregate, of Galloway and its Personnel and independent professional associates, and any of them, to Client and anyone claiming by, through, or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever (including, without limitation, indemnity obligations, contract damages, attorney's fees, and expert witness fees) arising out of or in any way related to Galloway's services, the Project, or this Agreement, from any cause or causes whatsoever and regardless of the legal theory asserted (including, without limitation, negligence, errors, omissions, strict liability, misrepresentation, breach of contract or warranty of Galloway or its Personnel or independent professional associates, or any of them), shall not exceed the total compensation received by Galloway under this Agreement, and if separate tasks are issued by Service Authorizations, then the total compensation received by Galloway for a specific service on a specific project at a specific location, or the coverage limit provided in Exhibit D, whichever is less; (b) Client and Galloway waive claims against each other: (i) for incidental, special, indirect, punitive or consequential damages arising out of or relating to this Agreement, and Galloway shall not be liable for any cost or expense that provides betterment, upgrade or enhancement of the Project; and (ii) and against the subcontractors, subconsultants and employees of the other for damages to the extent that the damages sustained by either Galloway or Client are covered by property insurance. The mutual waiver of consequential damages under subsection (b) above shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Galloway shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.
4. If, due to Galloway's negligence, a required item or component of the Project is omitted from Galloway's Instruments of Service, Galloway shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original Instruments of Service. In no event shall Galloway be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.
5. The provisions of this Section H shall survive expiration or termination of this Agreement and shall apply to all services provided to Client by Galloway, whether within or not within the Scope of Services of this Agreement, except as the parties may otherwise provide in a signed writing making specific reference to this section H.

I. Unauthorized Changes: In the event that Client, Client's contractors or subcontractors, or anyone for whom Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents prepared by Galloway without obtaining Galloway's prior written consent, Client shall assume full

responsibility for the results of such changes. Therefore, Client agrees to waive any claim against Galloway and to release Galloway from any liability arising directly or indirectly from such changes.

Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless Galloway from any damages liabilities or costs, including reasonable attorney's fees and costs of defense, arising from such changes. In addition, Client agrees to include in any contracts for construction appropriate language that prohibits the contractor or any subcontractors of any tier from making any changes or modifications to Galloway's construction documents without the prior written approval of Galloway and that further requires the Contractor to indemnify both Galloway and Client from any liability or cost arising from such changes made without such proper authorization.

J. Changes to Scope of Services, Suspension:

1. Additional Service Authorizations must be executed prior to commencing any and all additional services. Additional service requests from Client must include a comment period, commencement date, expected completion date, and any special conditions. If changes or additions cause an increase or decrease in the services provided under this Agreement, Galloway and Client shall memorialize such changes or additions to the services provided by completing a Service Authorization form.
2. Client may, upon written notice to Galloway, suspend further performance of Galloway's services. In such case, Galloway will promptly suspend its performance upon receiving said notice. During such period of suspension, Galloway shall care for and protect its services in progress for a period not to exceed 90 days, consecutively or in the aggregate. Client shall pay for any additional costs and fees incurred by Galloway as a result of the suspension of services. If Client chooses to withdraw a suspension as to all or part of suspended services, it must do so with written notice to Galloway, specifying the effective date of such withdrawal. If Galloway elects to proceed, Galloway may resume performance of the services for which the suspension was withdrawn within a reasonable amount of time of such notice of withdrawal.
3. Appropriate adjustments shall be made to Galloway's compensation and to any scheduling or deliverable dates justified by the suspension or withdrawal of suspension, and this Agreement shall be modified in writing accordingly.

K. Client Responsibilities:

1. Client shall cooperate with Galloway, in good faith, as necessary to allow Galloway to perform the services defined in this Agreement.
2. Client shall provide Galloway with information and criteria of Client's requirements for the Project.
3. Client shall provide access to the project site as necessary for Galloway's performance of the Scope of Services.
4. Client shall examine and respond promptly to Galloway's submissions to Client.
5. Client shall consult with Galloway on a regular basis concerning the timeliness, cost and adequacy of services as the services progress, and promptly furnish to Galloway written notice of any noncompliance with the terms of this Agreement.

L. Termination: This Agreement may be terminated by either party upon seven (7) days written notice. In the event of termination, all fees due Galloway will be paid for services performed to the termination notice date plus reasonable termination expenses. Galloway reserves the right to retain project related documents (electronic files and hard copies) upon contract termination until all payments for services performed to date of termination are received by Galloway.

M. Governing Law: All questions as to the interpretation or enforceability of this Agreement shall be interpreted in accordance with the laws of the State of Colorado. In the event of any litigation involving this Agreement or the performance by the parties thereto, such actions shall be brought in a court of competent jurisdiction in the State of Colorado.

All legal causes of action between the parties of this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion. In no event shall any statute of repose or limitation begin to run any later than the date Galloway's services are completed or terminated.

N. Miscellaneous:

1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Scope of Services, and supersedes all prior negotiations, representations or agreements relating thereto, written or oral. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless in writing and executed by Galloway and Client.
2. Severability and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to

enforce against the other party any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

3. **Assignment.** Client shall not assign this Agreement or any part hereof without the prior written consent of Galloway, nor shall Client assign any moneys due or to become due to it hereunder without the written consent of Galloway. Any such assignment or subcontract shall be null and void.
4. **Force Majeure.** Except for the payment of money for services already completed, each party shall not be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from causes beyond its control, including without limitation, strikes, lockouts, or other industrial disturbances, civil disturbances, fires, acts of God, acts of a public enemy, compliance with any regulations, orders or requirements of any governmental body or agency, or inability to obtain transportation or necessary materials in the open market.
5. **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address:

City of Dacono

For Technical Issues:

Attention: _____
Email: _____
Address: _____

For Contractual Issues:

Attention: _____
Email: _____
Address: _____

Galloway & Company, Inc.

For Technical Issues:

Attention: Joshua McCabe
Email: JoshuaMcCabe@GallowayUS.com
Address: 5265 Ronald Reagan Blvd., Suite
210
Johnstown, CO 80534

For Contractual Issues:

Attention: Frank Kohl
Email: FrankKohl@GallowayUS.com
Address: 5265 Ronald Reagan Blvd., Suite
210
Johnstown, CO 80534

Any such notices shall be either: (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three business days after deposit, postage prepaid in the U.S. Mail; (ii) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered one business day after deposit with such courier; (iii) sent by personal delivery or (iv) sent by email with read/receipt required and shall be deemed delivered upon receipt to the sending party of the acknowledged read/receipt. The above addresses may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

6. **Mediation.** If any dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled through direct discussions by the representatives of the Parties, the Parties agree then to submit the matter to mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission. Costs of mediation shall be shared equally by both parties.
7. **No Third Party Beneficiaries.** The enforcement of the terms and conditions of the Agreement and all rights of action relating to such enforcement shall be strictly reserved to Galloway and Client. There are no intended third party beneficiaries.
8. **Counterparts.** This Agreement may be signed in counterparts and by electronic signature which when taken together shall constitute one document.

EXHIBIT A-1

