

## CONSTRUCTION AGREEMENT

This Construction Agreement is made and entered into effective the 27<sup>th</sup> day of June, 2012, by and between the Parties listed below:

1. **Parties:**     **Owner:** San Juan County, Colorado, P. O. Box 465, Silverton, CO 81433; phone/fax 970 - 387-5766; email sanjuancounty@frontier.net (“Owner”); and
- Contractor:** Maisel Excavation, LLC, P. O. Box 826, Silverton, CO 81433; phone 970-759-9291; email pmaisel@thebent.com     (“Contractor”).

Owner hereby appoints County Administrator, William Tookey as its representative with full power and authority to deal with Contractor in all respects with regard to the Project, including full authority to bind Owner.

2. **Project/Property:** The Project shall consist of the installation of water and sewer infrastructure for the Anvil Mountain Subdivision. The infrastructure will be located in the Town of Silverton’s 5<sup>th</sup> Street Corridor and the Walsh Smelter site (a 13.8 acre parcel that is divided by Highway 550 immediately northwest of the Town of Silverton in unincorporated San Juan County, described as Parcel Number 4829-0.00-0.1-032 by San Juan County and also known as Tract B of the Ophir Placer) owned by San Juan County in accordance with the Contract Documents incorporated by reference below.

3. **Contract Documents:** The Contract Documents shall consist of: (a) this Construction Agreement, including any addenda hereto which the parties may hereafter execute; (b) the plans and specifications for the Project (copies of which have been supplied to Contractor); (c) the Owner’s request for bid; and (d) Contractor’s successful bid and List of Bid Items. The Contract Documents contain the entire agreement of the parties hereto and supersede all prior negotiations, communications and representations of the parties with respect to the subject hereof. No agreements, understandings or obligations of any sort exist with regard to the project outside of the express terms of the Contract Documents. Any modification or supplementation of this Agreement or of the Contract Documents, or any waiver of any of the terms contained therein, shall be ineffective unless written and signed by both of the parties hereto.

4. **Scope of Contractor’s Duties and Work:**

A. Contractor shall provide all labor and equipment (or shall contract with, direct and supervise approved, qualified subcontractors to provide all labor and materials) necessary to timely complete the installation of water and sewer infrastructure of the Anvil Mountain Subdivision in a good and workmanlike manner in strict conformity with the Contract Documents. Contractor shall have full charge over the work site and Owner agrees not to interfere with Contractor in the performance of Contractor’s duties.

B. Contractor shall complete all work and shall correct all items identified by Owner on any punch list prepared pursuant hereto within thirty days after notice of same.

C. Contractor shall report to Owner concerning the progress of the Project no less frequently than weekly and shall immediately report any major problems to Owner.

**5. Changes in Scope of Work:** In the event there are any changes in the scope of work to be performed by Contractor such changes shall be specifically itemized in written change orders which shall be dated and signed by both Owner and Contractor. Changes in Scope of Work shall include but not be limited to changes in width or depth of excavation or changes in design of project.

**6. Schedule:** Contractor shall commence work no later than July 9, 2012 and shall diligently pursue completion of the work, weather permitting, without interruption. Contractor shall complete the work no later than September 30, 2012 provided that the completion deadline shall be extended by one day for each day on which inclement weather or other unforeseen condition beyond the control of the Contractor prevented Contractor from working on the Project. This includes but shall not be limited to delays caused in part by the Owner for in the event of disagreement concerning renegotiations or third party review of the geologic conditions or for changes in the scope or design of the project.

**7. Payment:**

A. In consideration for all services to be performed by Contractor hereunder, Owner agrees to pay Contractor the total sum of One Hundred Ninety Seven Thousand Four Hundred and Forty-Five Dollars and No Cents (\$197,445.00), subject to adjustment as provided herein, payable on the 1<sup>st</sup> and the 14<sup>th</sup> of every month. In Addition, the Owner Agrees to pay the Contractor for the installation of electrical conduit at a rate of \$20.00 per foot. This agreement is subject to renegotiation if:

1. Both the Owner and Contractor mutually agree that a geologic condition creates an extreme hardship for the contractor to complete the excavation in a timely manner using the equipment specified. Should the Owner and Contractor disagree that there is a geologic condition that creates a hardship on the Contractor or to the extent of the hardship, both the Owner and Contractor agree to contract with a qualified expert to make that determination. The cost for the qualified expert will be divided equally between the Owner and the Contractor.

B. Contractor shall submit written invoices to Owner. The payment requested shall be for the services completed and materials supplied for the Project and approved by the County. A written progress report detailing work completed, identified problems, and remaining work shall accompany each request for payment, together with sufficient documentation of all reimbursable expenses or costs. The Owner shall retain 10% of all payment requests until completion of the Project.

C. All invoices shall be subject to review and approval by the San Juan County Board of County Commissioners at its next regularly scheduled meeting following receipt of the invoice. Owner shall pay all such invoices within five business days after approval by the Board of County Commissioners.

D. The balance of the contract price, as adjusted for any change of scope of work and including payment of retainage shall be due and payable no later than 30 days after completion of the Project by Contractor.

**8. Insurance, Bonding and Indemnity:**

A. San Juan County is required to obtain from Maisel Excavation, LLC security to ensure Maisel's full and complete performance under this contract. Because it is proving both difficult and expensive for Maisel to obtain a performance bond, and further because a performance bond may not provide the County an effective and expeditious means of completing the project if Maisel defaults, in lieu of posting a performance bond, on signing this contract, Maisel Excavation, LLC shall deliver to San Juan

County the title to the equipment listed below together with a fully executed Authorization and Appointment of Attorney in Fact, in the form attached, granting San Juan County the legal right to transfer ownership of the listed equipment to San Juan County or to anyone else in the event of default by Maisel under this agreement.

Title to the following equipment shall be delivered to San Juan County:

**2006 Volvo Excavator VIN #EC160V11166**

Maisel Excavation, LLC and Peter Maisel hereby warrant that the foregoing equipment is owned by Maisel Excavation, LLC and that it is free and clear of any liens or encumbrances of any type or sort whatsoever.

Ownership of the listed equipment, together with any obligation to use the same and the obligation to ensure the same against liability or loss shall remain with Maisel Excavation, LLC unless and until San Juan County transfers ownership thereof pursuant to this Contract. San Juan County shall have no liability with regard to the equipment, its use or loss, regardless of cause or circumstances.

B. Prior to starting work, Contractor shall procure and maintain in force for the duration of the project, Workers' Compensation on all workers employed by Contractor on the Project. Contractor shall also obtain and make available to Owner proof of Workers' Compensation or exemption therefrom from all contractors and subcontractors retained by Contractor to work on the Project.

C. Prior to starting work, Contractor shall procure and maintain in force for the duration of the Project, comprehensive general liability and property damage insurance, including coverage for pollution release, in such amount as may be required in the Contract Documents or by any source of funding of the project.

D. Contractor shall indemnify and hold harmless the County and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Contractor's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near County's property or arising in any way out of or resulting from any of the work or items to be provided by the Contractor under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Contractor agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of this Contract.

#### **9. Termination:**

A. In the event Owner breaches any obligation hereunder, or whenever otherwise provided herein, Contractor shall have the option to terminate this Agreement by written notice to Owner. If the option to terminate is exercised, it shall not be considered a Default as described in the section titled the same. Owner shall have the option to terminate this Agreement at any time with or without cause by written notice to Contractor.

B. In the event of termination, Contractor shall be relieved of any obligation of further

performance hereunder and shall be entitled to be paid by Owner for all work already performed less any amounts which Contractor may be obligated to pay on account of Contractor's breach, if any.

**10. Warranty:** Contractor hereby warrants that all work performed by Contractor, Contractor's employees and subcontractors retained by Contractor will fully comply with all plans and specifications and with the Contract Documents. Contractor shall correct any defects or variances from plans or specifications for a period of one year following delivery of possession of the Project to Owner without charge.

**11. Default:** If Contractor refuses or fails to perform any of the terms of this Contract, including poor services, work or materials or untimely performance, the Owner may, by written notice to Contractor, terminate this Contract in whole or in part. In addition to any right to terminate, the Owner may enforce any remedy available at law or in equity in connection with such default, and Contractor shall be liable for any damages to the Owner resulting from Contractor's default. The Owner further reserves the right to immediately obtain such work or services from other entities in the event of Contractor's default, all at Contractor's expense. If Owner fails to perform any of the terms of this Contract, the Contractor may, by written notice to the Owner terminate this Contract in whole or in part. In addition to any right to terminate, the Contractor may enforce any remedy available in law or in equity in connection with such default, and Owner shall be liable for any damage to Contractor resulting from Owner's failure to perform.

**12. Miscellaneous:**

A. **Governing Law:** This transaction shall be deemed for all purposes to have been made and entered into in San Juan County, Colorado. The Contract Documents, and any proceeding in connection therewith or the transaction to which they relate, shall be governed by, and interpreted in accordance with, the substantive and procedural law of the state of Colorado.

B. **Disputes:** Prior to initiating any action alleging any breach of the Contract Documents or asserting any claim regarding the Project, the party claiming a breach or asserting a claim shall first initiate mediation. Such mediation shall be before an individual jointly selected by the parties, or if the parties are unable to agree on such a person, before an individual appointed by the San Juan County Court. Any mediator shall have knowledge and experience in construction and, if possible, shall also have knowledge and experience relating to the litigation of construction disputes. The parties shall share equally the cost of the mediation. If mediation fails to produce a resolution, venue of any dispute involving the Contract Documents or any provision or interpretation thereof, or involving any matter arising out of or connected in any way with the construction of the Project contemplated hereby, and jurisdiction over the parties hereto, shall lie exclusively in the courts of San Juan County, Colorado. The parties hereto hereby irrevocably consent and submit to the jurisdiction of, and venue in, said court, hereby waiving any rights they may now or hereafter have to object to, or seek a change of, such jurisdiction and venue. The parties further waive any right they may now or hereafter have to obtain trial by jury of any issues involving this transaction, hereby stipulating to trial to the Court of any disputes between them. In the event of any legal action involving this Agreement or the Contract Documents, the prevailing party shall be entitled to recover all costs and expenses associated with such action or litigation, including but not limited to, attorneys fees, witness fees, expert witness fees, travel and other expenses, copying, telephone and all other charges and expenses.

C. **Assigns:** Neither this Agreement nor the Contract Documents nor any of the rights or obligations of any party thereunder shall be assignable or transferable by either party without the prior written consent of the other party. Notwithstanding the foregoing, this Agreement and the Contract

Documents shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties.

D. Counterparts: This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

E. Survival of Obligations: All obligations, covenants, representations and warranties of both parties hereto shall remain in effect until all obligations hereunder or under any other agreements involved in the transaction to which this Agreement and the Contract Documents relate are fully performed.

F. Waiver: No failure on the part of any party hereto to exercise, and no delay in exercising, any right hereunder, specifically including but not limited to the failure to declare a default or to accelerate the debt, shall operate as a waiver of such right nor shall any single or partial exercise by a party hereto of any right hereunder preclude the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

G. Notices: Notices may be given in person, by mail, or by electronic means it being the intent of the parties that any notice is deemed received upon proof that delivery was made (for example, by fax confirmation or lack of return of email transmission showing non-delivery).

H. Compliance with Laws: Contractor agrees to and will comply with all applicable permits, federal, state, and local laws, ordinances, and regulations, including all applicable licensing requirements.

I. Independent Contractor: The relationship between Contractor and the Owner is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Contractor shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner or employee of the other for any purpose. Contractor shall be responsible for causing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance to be provided for all of its employees and subcontractors. Contractor will be responsible for all actions of any of its subcontractors, and that they are properly licensed.

J. Records: Contractor agrees to maintain all books, records and other documents relating to this Contract for a period of five (5) years after the end of each fiscal year included in this Contract. The Owner, its authorized employees, agents, representatives, and/or state auditors shall have full access to and the right to examine, copy, and/or audit any of such materials during the term of the Contract and such retention period, upon prior written notice to Contractor.

In witness whereof the parties have set their hands effective as of the date set forth above.

Maisel Excavation, LLC

San Juan County, Colorado

By: 

By: 

## Anvil Mountain Subdivision - Infrastructure Construction Project List of Bid Items as of June 19, 2012

### Page 1 of 5

This List of Bid Items aka "Bid Schedule" is a list of items and quantities for the completion of the proposed infrastructure construction project. **Items with bold text have been revised as Addendum 1.**

Item #	Description	Quantity	Unit	Unit Price	Total Price
1	Stormwater Management Plan (SWMP) and Permitting <b>(Plan to be provided by San Juan County)</b>	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
2	Coordinate with County, Town Public Works, and Engineer to list and order all materials (all materials <del>except soils</del> to be provided by San Juan County)	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
3	Prepare Project Schedule	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
4	UNCC utility locates	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
5	Temporary fencing of lots to prevent lot soil contamination to be performed by Schaaf and provided by San Juan County prior to mobilization	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
6	Mobilization	<u>1</u>	<u>lump sum</u>	<u>\$1500</u>	<u>\$1,500</u>
7	Install SWMP BMPs	<u>1</u>	<u>lump sum</u>	<u>\$320</u>	<u>\$320</u>
8	Provide portojohn(s)	<u>1</u>	<u>lump sum</u>	<u>\$450</u>	<u>\$450</u>
9	Provide trench boxes	<u>1</u>	<u>lump sum</u>	<u>\$4800</u>	<u>\$4,800</u>
10	Provide rental sheepsfoot compactors	<u>1</u>	<u>lump sum</u>	<u>\$4500</u>	<u>\$4,500</u>
11	Provide jumping jack(s)	<u>1</u>	<u>lump sum</u>	<u>\$850</u>	<u>\$850</u>
12	Construction staking to be performed by Schaaf and provided by San Juan County	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>

X  
Contractor Company Name (please print)

Date

ANVIL MOUNTAIN  
SUBDIVISION

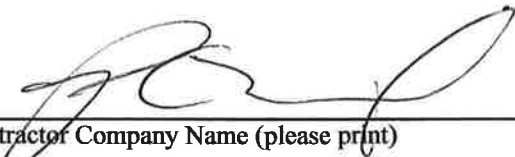
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**Anvil Mountain Subdivision - Infrastructure Construction Project  
List of Bid Items as of June 19, 2012**

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<b>Item #</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total Price</b>
13	Provide water truck for moisture conditioning of backfill and for dust control	<u>1</u>	<u>lump sum</u>	<u>\$5000</u>	<u>\$5,000</u>
14	Tie into nearest hydrant for water for backfill placement	<u>1</u>	<u>lump sum</u>	<u>\$200</u>	<u>\$200</u>
15	Provide backflow preventer for hydrant tie-in	<u>1</u>	<u>lump sum</u>	<u>\$400</u>	<u>\$400</u>
16	Provide equipment to mix water into backfill soils	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
17	Provide and use tarps to protect backfill soil and bedding stock-piles from precipitation	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
18	Proctor tests to be performed by Trautner Geotech and provided by San Juan County	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
19	Coordinate with Trautner Geotech to arrange backfill compaction testing schedule (minimum one test every other 6" max. backfill lift per Town of Silverton requirements)	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
20	Install 8" ductile iron water main pipe with imported bedding	<u>1,570</u>	<u>linear feet</u>	<u>\$40</u>	<u>\$62,800</u>
21	Install hydrant and hydrant appurtenances, including valves and 6" ductile iron pipe	<u>3</u>	<u>each</u>	<u>\$1500</u>	<u>\$4,500</u>

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Contractor Company Name (please print)

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**Anvil Mountain Subdivision - Infrastructure Construction Project  
List of Bid Items as of June 19, 2012**

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<b>Item #</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total Price</b>
24	Tie-in to existing water system	<u>1</u>	<u>lump sum</u>	<u>\$500</u>	<u>\$500</u>
25	Install 8" SDR 35 sewer main pipe with imported bedding	<u>1,714</u>	<u>linear feet</u>	<u>\$50</u>	<u>\$85,700</u>
22	Install water taps with short stub pipe and cap	<u>28</u>	<u>each</u>	<u>\$250</u>	<u>\$7,000</u>
23	Install cross with valves and appurtenances for future water main extensions	<u>3</u>	<u>each</u>	<u>\$1,500</u>	<u>\$4,500</u>
26	Install full-bodied in-line sewer tap wyes with elbow, short stub, and cap	<u>28</u>	<u>each</u>	<u>\$250</u>	<u>\$7,000</u>
27	Install new manholes with bedding and appurtenances	<u>7</u>	<u>each</u>	<u>\$715</u>	<u>\$5,225</u>
28	Tie into existing manhole	<u>1</u>	<u>each</u>	<u>\$1,200</u>	<u>\$1,200</u>
29	Encasement at proposed water main-sewer main crossings	<u>2</u>	<u>each</u>	<u>\$250</u>	<u>\$500</u>
30	Install electric conduit, transformer with concrete pad, and appurtenances per San Miguel Power Assoc.	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
31	Coordinate with SMPA to move one existing power pole in 5th Street roadway	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
32	Install phone infrastructure per CenturyLink (formerly Qwest)	<u>1</u>	<u>lump sum</u>	<u>N/A</u>	<u>N/A</u>

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Contractor Company Name (please print)

Date

ANVIL MOUNTAIN  
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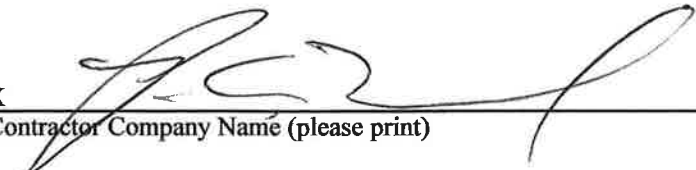


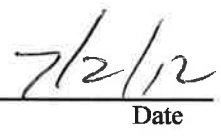
**Anvil Mountain Subdivision - Infrastructure Construction Project  
List of Bid Items as of June 19, 2012**

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<b>Item #</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total Price</b>
33	Final grading of on-site and off-site 5th Street, and Martha Rose Street (to be performed by County Road & Bridge Dept.)	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
34	4" of 3/4" ABC on roadway surfaces of on-site and off-site 5th Street, and Martha Rose Street (to be performed by San County Road & Bridge Dept.)	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
35	Excavate retention ponds (to be performed by San Juan County Road & Bridge Dept.)	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
36	Place cast-in-place concrete drainage inlet box and associated improvements at RCP drainage culvert <b>(box and materials to be provided by San Juan County)</b>	<u>1</u>	<u>lump sum</u>	<u>\$500</u>	<u>\$500</u>
37	Construct drainage ditch along eastern property line at base of existing slag repository pile	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
38	Placement of traffic bollards at existing power poles	<u>12</u>	<u>each</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
39	<b>Placement of stop sign at 5th and Martha Rose Streets</b>	<u>1</u>	<u>each</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
40	<b>Placement of street sign at 5th and Martha Rose Streets</b>	<u>2</u>	<u>each</u>	<u>\$ N/A</u>	<u>\$ N/A</u>

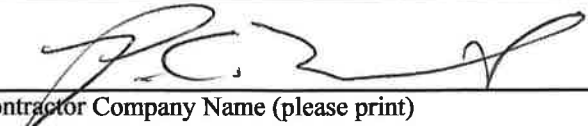
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**Anvil Mountain Subdivision - Infrastructure Construction Project**  
**List of Bid Items as of June**  
**Page 5 of 5**

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<b>Item #</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total Price</b>
41	<del>Place fence between existing slag repository pile and trail</del>	<u>915</u>	<u>linear feet</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
42	Winter access plowing charge per hour rate, if needed	<u>1</u>	<u>hour</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
43	Contractor administration and meeting fees	<u>1</u>	<u>lump sum</u>	<u>\$0</u>	<u>\$0</u>
44	Other item(s) per addenda (List here:)	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
<b><u>Addendum 1 Items</u></b>					
44A	<b>Bedding and roadbase to be provided by San Juan County</b>	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
44B	<b>Bedding to be hauled by the County</b>	<u>1,100</u>	<u>cubic yards (in place &amp; compacted)</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
44C	<b>Roadbase to be hauled by San Juan County Road &amp; Bridge Department</b>	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
44D	<b>Screening (if needed) of native soils to be used as trench backfill, to create minus 3-inch stockpile - per hour rate</b>	<u>1</u>	<u>hour</u>	<u>\$160</u>	<u>\$</u>
44E	<b>Screen (if needed) to be provided by San Juan County</b>	<u>1</u>	<u>lump sum</u>	<u>\$ N/A</u>	<u>\$ N/A</u>
<b>Total Price</b>					<b><u>\$197,445</u></b>

X   
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