

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



CONSTRUCTION MATERIALS

SPECIAL (111) OPERATION

RECLAMATION PERMIT APPLICATION FORM

RECEIVED

MAY 06 2021

DIVISION OF RECLAMATION
MINING AND SAFETY

The application for a Construction Materials Special 111 Operation Reclamation Permit contains four major parts: (1) the application form; (2) Exhibits A-L, Addendum 1, and any sections of Exhibit 6.5 (Geotechnical Stability Exhibit), as required by the Office, and outlined in Rules 6.1, 6.2, 6.3, 6.5, and 1.6.2(1)(b); (3) the application fee; (4) the Performance Warranty and if required a Financial Warranty. When you submit your application, be sure to include one (1) **completed, signed and notarized ORIGINAL** and one (1) copy of the completed application form, two (2) copies of Exhibits A-L, Addendum 1, appropriate sections of Exhibit 6.5 (Geotechnical Stability Exhibit), as required, a check for the application fee described under (4) below, and the fully executed Performance Warranty and Financial Warranty, if required. Exhibits should **NOT** be bound or in 3-ring binders; maps should be folded to 8 2" X 11" or 8 2" X 14" size. To expedite processing, please provide the information in the format and order described in this form.

GENERAL OPERATION INFORMATION

Type or print clearly, in the space provided, all information described below

- Applicant/operator or company name (name to be used on the permit):**
Ames Construction, Inc.
- Operation name (pit, mine or site name):** Burnham Property Borrow
- Permitted acreage:** 16.00 Permitted Acres
- New Application:** \$898.00 Application Fee
- Primary commodity(ies) to be mined:** Fill Dirt
- Name of owner to the surface of affected land:** Arlene Burnham
- Name of owner to the subsurface rights of affected land:** Arlene Burnham
- Type of mining operation:** ☒ Surface ☐ Underground ☐ In-situ
- Location information:** The **center** of the area where the majority of mining will occur:
COUNTY: Weld
PRINCIPAL MERIDIAN (check one): ☒ 6th (Colorado) ☐ 10th (New Mexico) ☐ Ute
SECTION (write number): S 6
TOWNSHIP (write number and check direction): T 9 ☒ North ☐ South
RANGE (write number and check direction): R 67 ☐ East ☒ West
QUARTER SECTION (check one): ☒ NE ☐ NW ☐ SE ☐ SW
QUARTER/QUARTER SECTION (check one): ☐ NE ☒ NW ☐ SE ☐ SW
GENERAL DESCRIPTION: (the number of miles and direction from the nearest town and the approximate elevation):
6.5 miles NE of Wellington, CO Approx Elevation 5600

Special III
Operation Permit
Application

Burnham Property
Borrow

1	Application Fee
2	ORIGINAL Special III Operation Application
3	COPY Special III Operation Application
4	Copy 1 All Exhibits
5	Copy 2 All Exhibits
6	Copy 1 Addendum 1
7	Copy 2 Addendum 1
8	Financial 3 Performance Warranty Forms

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1.	<u>Applicant/operator or company name (name to be used on the permit):</u>		
	Ames Construction, Inc.		
1.1	Type of organization (corporation, partnership, etc.):	Corporation	
2.	<u>Operation name (pit, mine or site name):</u>	Burnham Property Borrow	
3.	<u>Permitted acreage:</u>	16.00	Permitted Acres
4.	<u>New Application:</u>	\$898.00	Application Fee
5.	<u>Primary commodity(ies) to be mined:</u>	Fill Dirt	
6.	<u>Name of owner to the surface of affected land:</u>	Arlene Burnham	
7.	<u>Name of owner to the subsurface rights of affected land:</u>	Arlene Burnham	
8.	<u>Type of mining operation:</u>	☒ Surface ☐ Underground ☐ In-situ	
9.	<u>Location information:</u> The center of the area where the majority of mining will occur:		
	COUNTY:	Weld ☐ 6th (Colorado) ☐ 10th (New Mexico) ☐ Ute	
	PRINCIPAL MERIDIAN (check one):	☒ 6th (Colorado) ☐ 10th (New Mexico) ☐ Ute	
	SECTION (write number):	S 6	
	TOWNSHIP (write number and check direction):	T 9 ☒ North ☐ South	
	RANGE (write number and check direction):	R 67 ☐ East ☒ West	
	QUARTER SECTION (check one):	☒ NE ☐ NW ☐ SE ☐ SW	
	QUARTER/QUARTER SECTION (check one):	☐ NE ☒ NW ☐ SE ☐ SW	
	GENERAL DESCRIPTION: (the number of miles and direction from the nearest town and the approximate elevation):		
	6.5 miles NE of Wellington, CO Approx Elevation 5600		

10. **Primary Mine Entrance Location** (report in either Latitude/Longitude **OR** UTM):

Latitude/Longitude:

Example: (N) 39° 44' 12.98"
(W) 104° 59' 3.87"

Latitude (N): deg 40 min 46 sec 59.78 (2 decimal places)

Longitude (W): deg 104 min 55 sec 48.92 (2 decimal places)

OR

Example: (N) 39.73691°
(W) -104.98449°

Latitude (N) _____ (5 decimal places)

Longitude(W) _____ (5 decimal places)

OR

Universal Tranverse Mercator (UTM)

Example: 201336.3 E NAD27 Zone 13
4398351.2 N

UTM Datum (specify NAD27, NAD83 or WGS 84) _____ Zone _____

Easting _____

Northing _____

11. **Primary Future (Post-mining) Land Use (check only one):**

- | | | |
|--|---|--|
| ☐ Cropland(CR) | ☐ Pastureland(PL) | ☐ General Agriculture(GA) |
| ☒ Rangeland(RL) | ☐ Forestry(FR) | ☐ Wildlife Habitat(WL) |
| ☐ Residential(RS) | ☐ Recreation(RC) | ☐ Industrial/Commercial(IC) |
| ☐ Developed Water Resources(WR) | ☐ Solid Waste Disposal(WD) | |

12. **Primary Present Land Use (check only one):**

- | | | |
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| ☒ Rangeland(RL) | ☐ Forestry(FR) | ☐ Wildlife Habitat(WL) |
| ☐ Residential(RS) | ☐ Recreation(RC) | ☐ Industrial/Commercial(IC) |
| ☐ Developed Water Resources(WR) | ☐ Mining(MN) | |

13. **Estimated Beginning Date of Contract:**

April 20, 2021

13.1 Estimated completion date of contract:

December 23, 2021

15. **Correspondence Information:**

APPLICANT/OPERATOR (name, address, and phone of name to be used on permit)

Contact's Name: Trent Irick Title: Senior Vice President
Company Name: Ames Construction, Inc
Street/P.O. Box: 18450 E 28th Ave P.O. Box: _____
City: Aurora
State: CO Zip Code: 80011
Telephone Number: (303) - 363-1000
Fax Number: () -

PERMITTING CONTACT (if different from applicant/operator above)

Contact's Name: Kirk Bergstrom Title: Project Manager
Company Name: Ames Construction, Inc
Street/P.O. Box: 18450 E 28th Ave P.O. Box: _____
City: Aurora
State: CO Zip Code: 80011
Telephone Number: (720) - 334-3680
Fax Number: () -

INSPECTION CONTACT

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Street/P.O. Box: 18450 E 28th Ave P.O. Box: _____
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State: CO Zip Code: 80011
Telephone Number: (720) - 334-3680
Fax Number: () -

CC: STATE OR FEDERAL LANDOWNER (if any)

Agency: _____
Street: _____
City: _____
State: _____ Zip Code: _____
Telephone Number: () -

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Agency: _____
Street: _____
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14. — **Maps & Exhibits:** Submit two (2) complete, unbound copies of the following application exhibits:

- 6.3.1 EXHIBIT A - Legal Description and Location Map
- 6.3.2 EXHIBIT B - Site Description
- 6.3.2 EXHIBIT C - Mining Plan
- 6.3.4 EXHIBIT D - Reclamation Plan
- 6.3.5 EXHIBIT E - Maps, to include the location of any recorded easements
- 6.3.6 EXHIBIT F - List of Other Permits and Licenses Required
- 6.3.7 EXHIBIT G - Source of Legal Right-to-Enter
- 6.3.8 EXHIBIT H - Municipalities Within a Two-mile Radius
- 6.3.9 EXHIBIT I - Proof of Filing with County Clerk
- 6.3.10 EXHIBIT J - Proof of Mailing Notices of Permit Application
- 6.3.11 EXHIBIT K - Terms of Governmental Contract
- 6.3.12 EXHIBIT L - Permanent Man-made Structures
- 1.6.2(1)(b) ADDENDUM 1 - Notice Requirements
- 6.5 Geotechnical Stability Exhibit (as required)

Responsibilities as a Permittee:

Upon application approval and permit issuance, this application becomes a legally binding document. Therefore, there are a number of important requirements which you, as a permittee, should fully understand. These requirements are listed below. **Please read and initial each requirement**, in the space provided, to acknowledge that you understand your obligations. If you do not understand these obligations then please contact this Office for a full explanation.

KAB

1. Your obligation to reclaim the site is not limited to the amount of the financial warranty. You assume legal liability for all reasonable expenses which the Board or the Office may incur to reclaim the affected lands associated with your mining operation in the event your permit is revoked and financial warranty is forfeited;

KAB

2. The Board may suspend or revoke this permit, or assess a civil penalty, upon a finding that the permittee violated the terms or conditions of this permit, the Act, the Mineral Rules and Regulations, or that information contained in the application or your permit misrepresent important material facts;

KAB

3. If your mining and reclamation operations affect areas beyond the boundaries of an approved permit boundary, substantial civil penalties, to you as permittee can result;

KAB

4. Any modification to the approved mining and reclamation plan from those described in your approved application requires you to submit a new permit application and obtain approval from the Board or Office;

KAB

5. It is your responsibility to notify the Office of any changes in your address or phone number;

KAB

6. Upon permit issuance and prior to beginning on-site mining activity, you must post a sign at the entrance of the mine site, which shall be clearly visible from the access road, with the following information (Rule 3.1.12):

- a. the name of the operator;
- b. a statement that a reclamation permit for the operation has been issued by the Colorado Mined Land Reclamation Board; and,
- c. the permit number.

- KAB 7. The boundaries of the permit boundary area must be marked by monuments or other markers that are clearly visible and adequate to delineate such boundaries prior to site disturbance;
- KAB 8. It is a provision of this permit that the operations will be conducted in accordance with the terms and conditions listed in your application, as well as with the provisions of the Act and the Mineral Rules and Regulations in effect at the time the permit is issued.
- KAB 9. Annually, on the anniversary date of permit issuance, you must submit an annual fee (**\$504**), and an annual report which includes a map describing the acreage affected and the acreage reclaimed to date (if there are changes from the previous year), any monitoring required by the Reclamation Plan to be submitted annually on the anniversary date of the permit approval. Annual fees are for the previous year a permit is held. For example, a permit with the anniversary date of July 1, 1995, the annual fee is for the period of July 1, 1994 through June 30, 1995. Failure to submit your annual fee and report by the permit anniversary date may result in a civil penalty, revocation of your permit, and forfeiture of your financial warranty. It is your responsibility, as an operator, to continue to pay your annual fee to the Office until the Board releases you from your total reclamation responsibility.

NOTE TO COMMENTORS/OBJECTORS:

It is likely there will be additions, changes, and deletions to this document prior to final decision by the Office. Therefore, if you have any comments or concerns you must contact the applicant or the Office prior to the decision date so that you will know what changes may have been made to the application document.

The Office is not allowed to consider comments, unless they are written, and received prior to the end of the public comment period. You should contact the applicant for the final date of the public comment period.

If you have questions about the Mined Land Reclamation Board and Office's review and decision or appeals process, you may contact the Office at (303) 866-3567.

Certification:

As an authorized representative of the applicant, I hereby certify that the operation described has met the minimum requirements of the following terms and conditions:

1. All necessary approvals from local government have been applied for (Section 34-32.5-111(1)(a)(IX));
2. This entire mining operation will not affect more than 30 acres;
3. This mining operation will not adversely affect the stability of any significant, valuable and permanent man-made structure(s) located within two hundred (200) feet of the affected lands. (However, where there is an agreement between the applicant/operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the applicant/operator (Section 34-32.5-115(4)(e), C.R.S. 1984, as amended), then mining may occur within 200 feet. Proof of an agreement must be submitted to the Office prior to the decision date.)
4. No mining operation will be located on lands where such operations are prohibited by law (Section 34-32.5-115(4)(f), C.R.S. 1984, as amended);
5. As the applicant/operator, I do not have any mining/exploration operations in this state of Colorado currently in violation of the provisions of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Section 34-32.5-120, C.R.S. 1984, as amended) as determined through a Board finding.
6. I understand that statements in the application are being made under penalty of perjury and that false statements made herein are punishable as a Class 1 misdemeanor pursuant to Section 18-8-503, C.R.S. 1984, as amended.

This form has been approved by the Mined Land Reclamation Board pursuant to section 34-32.5-111, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials. Any alteration or modification of this form shall result in voiding any permit issued on the altered or modified form and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to section 34-32.5-123, C.R.S.

Signed and dated this 4 day of May, 2021.

Ames Construction, Inc.

Applicant/Operator

By: [Signature]
Title: Executive Vice President

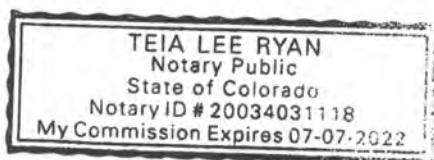
If Corporation Attest (Seal)

By: [Signature]
Corporate Secretary or Equivalent
Town/City/County Clerk

State of Colorado)
County of Arapahoe) ss.

The foregoing instrument was acknowledged before me this 4th day of May.

by Trent Irick as Regional Vice President of Ames Construction



Teia Lee Ryan
Notary Public
My Commission expires: 07/07/2022

SIGNATURES MUST BE IN BLUE INK

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Easting _____

Northing _____

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- | | | |
|--|---|--|
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CC: STATE OR FEDERAL LANDOWNER (if any)

Agency: _____
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- 1.6.2(1)(b) ADDENDUM I - Notice Requirements
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5. As the applicant/operator, I do not have any mining/exploration operations in this state of Colorado currently in violation of the provisions of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Section 34-32.5-120, C.R.S. 1984, as amended) as determined through a Board finding.
6. I understand that statements in the application are being made under penalty of perjury and that false statements made herein are punishable as a Class 1 misdemeanor pursuant to Section 18-8-503, C.R.S. 1984, as amended.

This form has been approved by the Mined Land Reclamation Board pursuant to section 34-32.5-111, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials. Any alteration or modification of this form shall result in voiding any permit issued on the altered or modified form and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to section 34-32.5-123, C.R.S.

Signed and dated this 4 day of May, 2021.

Ames Construction, Inc.

Applicant/Operator

By: [Signature]
Title: Executive Vice President

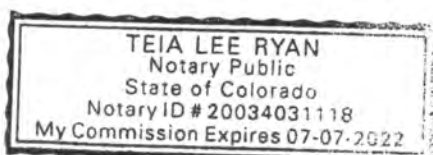
If Corporation Attest (Seal)

By: [Signature]
Corporate Secretary or Equivalent
Town/City/County Clerk

State of Colorado)
) ss.
County of Archuleta)

The foregoing instrument was acknowledged before me this 4th day of May,

by Trent Irick as Regional Vice President of Ames Construction



Teia Lee Ryan
Notary Public

My Commission expires: 07/07/2022

SIGNATURES MUST BE IN BLUE INK

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: MAY 3, 2021

EXHIBIT A - Legal Description and Location Map

See attached

Burnham Property Borrow

Parcel: 045306100016

Section: 6

Township: 9N

Range: 67W

**Weld County**
PROPERTY PORTAL

Property Information (970) 400-3650
Technical Support (970) 400-4357

Tools Identify Measure Draw Advanced

Layers Home Legend Results

Owner Address Account # Parcel # S-T-R Subdivision Adv. Search Data Search

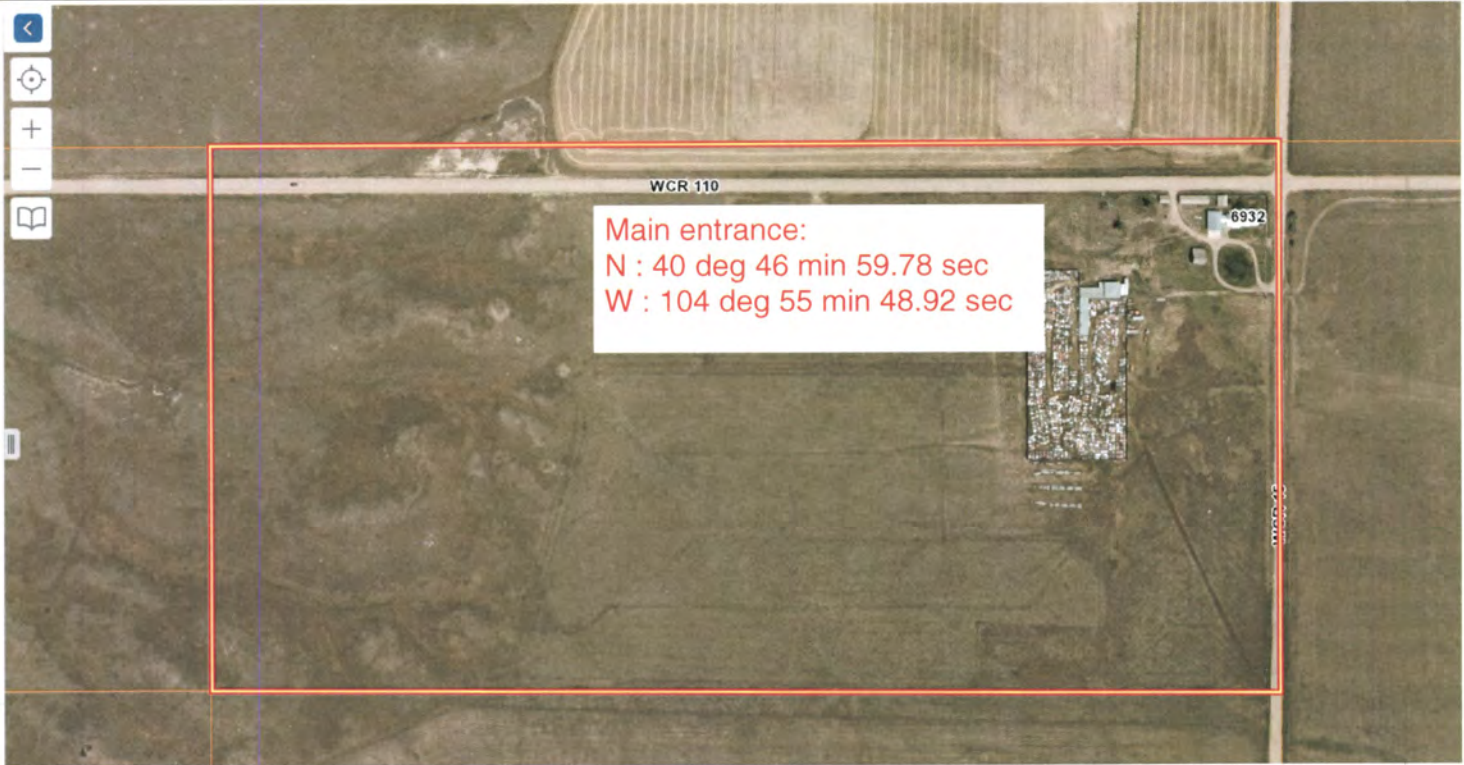
Search by

Pan Initial View Print Identify Point Distance

Tools

← Parcels (1)

☆ Owner: BURNHAM ARLENE E
Account: R8945579 Parcel: 045306100016
Address: 6932 COUNTY ROAD 110 WELD
Subdivision:
Section: 6 Township: 9N Range: 67W
[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)



Displaying 1 - 1 (Total: 1)

◀ Page 1 of 1 ▶

Burnham Property Borrow Adjacent Property

**Weld County**
PROPERTY PORTAL

Property Information (970) 400-3650
Technical Support (970) 400-4357

ToolsIdentifyMeasureDrawAdvanced

LayersHomeLegendResults

OwnerAddressAccount #Parcel #S-T-RSubdivisionAdv. SearchData Search

Search by

PanInitial ViewPrintIdentify PointDistance

Tools

← Parcels (1)

☆ Owner: DIEHL M J & SONS INC

Account: R0308386 Parcel: 030331000001

Address:

Subdivision:

Section: 31 Township: 10N Range: 67W

[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)



Displaying 1 - 1 (Total: 1)

◀ ◁ Page 1 of 1 ▶ ▷

Burnham Property Borrow Adjacent Property

**Weld County**
PROPERTY PORTAL

Property Information (970) 400-3650
Technical Support (970) 400-4357

Tools Identify Measure Draw Advanced

Layers Home Legend Results

Owner Address Account # Parcel # S-T-R Subdivision Adv. Search Data Search

Search by

Pan Initial View Print Identify Point Distance

Tools

← Parcels (1) > ...

☆ Owner: BURNHAM ARLENE E
Account: R8768100 Parcel: 030332300009
Address:
Subdivision:
Section: 32 Township: 10N Range: 67W
[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)



Displaying 1 - 1 (Total: 1)

Burnham Property Borrow Adjacent Property

**Weld County**
PROPERTY PORTAL

Property Information (970) 400-3650
Technical Support (970) 400-4357

Tools Identify Measure Draw Advanced

Layers Home Legend Results

Owner Address Account # Parcel # S-T-R Subdivision Adv. Search Data Search

Show Search by Tools

← Parcels (1)

☆ Owner: BURNHAM ARLENE E
Account: R0311386 Parcel: 045305200008
Address: 7386 COUNTY ROAD 110 WELD
Subdivision:
Section: 5 Township: 9N Range: 67W
[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)

Displaying 1 - 1 (Total: 1)
◀ Page 1 of 1 ▶▶

Layers Parcels (1) Print Map



Basemaps

VDP © 201

Burnham Property Borrow Adjacent Property



Weld County

PROPERTY PORTAL

Property Information (970) 400-3650

Technical Support (970) 400-4357

Tools

Identify

Measure

Draw

Advanced

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Legend

Results

Owner

Address

Account #

Parcel #

S-T-R

Subdivision

Adv. Search

Data Search

Pan

Initial View

Print

Identify Point

Distance

Show

Search by

Tools

←

Parcels (1)

☰

☆ Owner: BURNHAM ARLENE E

Account: R8945584 Parcel: 045306100017

Address:

Subdivision:

Section: 6 Township: 9N Range: 67W

[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)

☰

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Page 1 of 1

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Burnham Property Borrow Adjacent Property

**Weld County**
PROPERTY PORTAL

Property Information (970) 400-3650
Technical Support (970) 400-4357

ToolsIdentifyMeasureDrawAdvanced


Layers


Home


Legend


Results

Show


Owner


Address


Account #


Parcel #


S-T-R


Subdivision


Adv. Search


Data Search

Search by


Pan


Initial View


Print


Identify Point


Distance

Tools

← Parcels (1)

☆ Owner: K & A LAND INC

Account: R8945585 Parcel: 045306200019

Address:

Subdivision:

Section: 6 Township: 9N Range: 67W

[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)



WCR 15

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Burnham Property Borrow Adjacent Property

**Weld County**
PROPERTY PORTAL

Property Information (970) 400-3650
Technical Support (970) 400-4357

ToolsIdentifyMeasureDrawAdvanced



LayersHomeLegendResults

Show



OwnerAddressAccount #Parcel #S-T-RSubdivisionAdv. SearchData Search

Search by



PanInitial ViewPrintIdentify PointDistance

Tools



Parcels (1)



☆ Owner: K & A LAND INC

Account: R8945580 Parcel: 045306200018

Address:

Subdivision:

Section: 6 Township: 9N Range: 67W

[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)



Displaying 1 - 1 (Total: 1)



Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT B – Site Description

(a) Existing Vegetation and soil characteristics of the site area.

The 15.5 acres of the permit site are presently rangeland. Existing vegetation consists predominately of grasses.

The site soils have been classified by the United States Department of Agriculture as a Cascajo gravelly sandy loam in the attached report.

(b) List of permanent man-made structures within 200 feet of affected area:

- Weld County Road 110
- Overhead powerline and utilities poles belonging to Poudre Valley REA
- Nunn Telephone Company fiber optic line

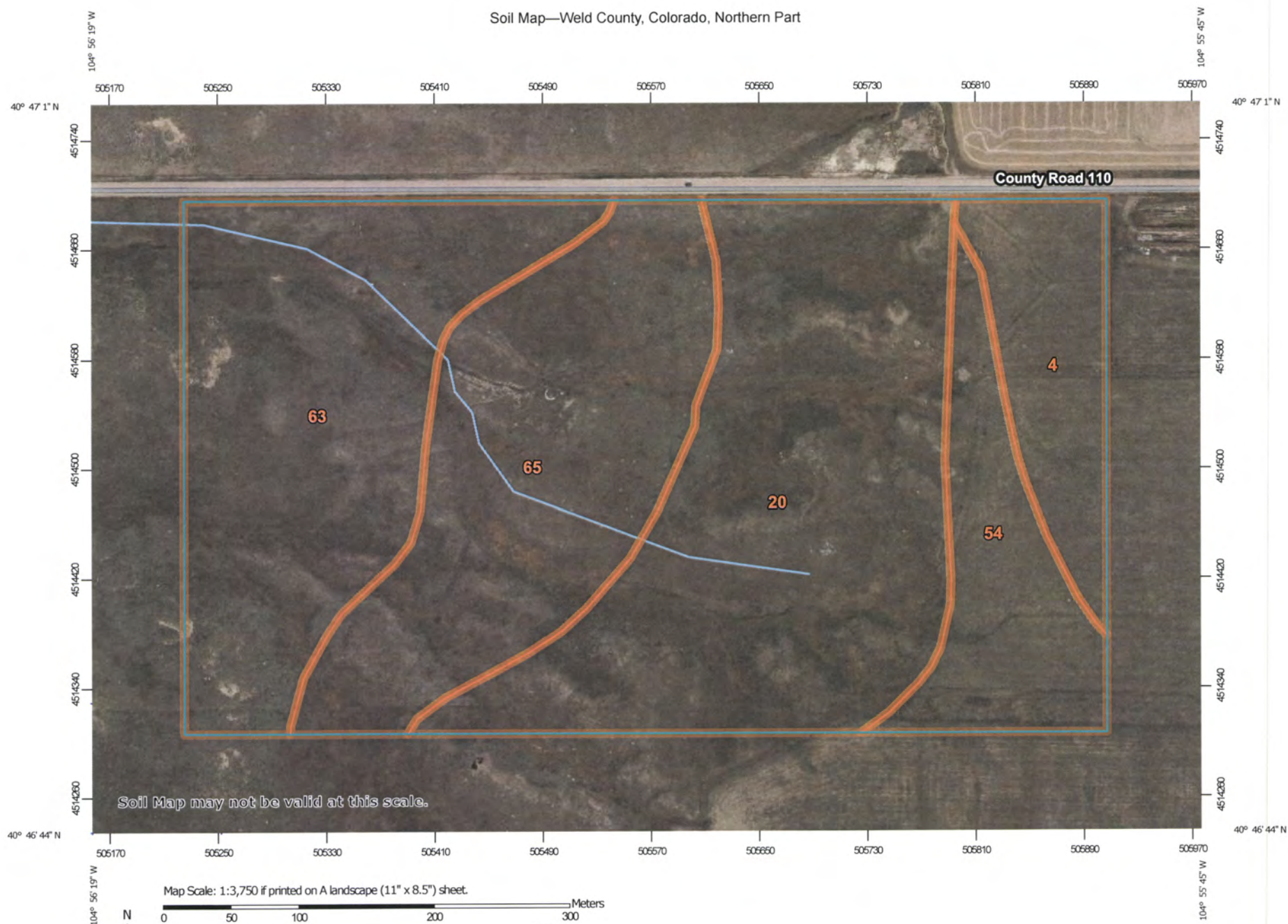
(c) Water resources in the area of the proposed borrow.

- Indian Creek Reservoir approximately 12,500 feet south east of the proposed borrow location.

(d) Wildlife assessment.

Not required for 111 Special Operations.

Soil Map—Weld County, Colorado, Northern Part



Soil Map may not be valid at this scale.

Map Scale: 1:3,750 if printed on A landscape (11" x 8.5") sheet.

0 50 100 200 300 Meters

0 150 300 600 900 Feet

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 13N WGS84



Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey

3/15/2021
Page 1 of 3

MAP LEGEND

Area of Interest (AOI)

 Area of Interest (AOI)

Soils

 Soil Map Unit Polygons

 Soil Map Unit Lines

 Soil Map Unit Points

Special Point Features

 Blowout

 Borrow Pit

 Clay Spot

 Closed Depression

 Gravel Pit

 Gravelly Spot

 Landfill

 Lava Flow

 Marsh or swamp

 Mine or Quarry

 Miscellaneous Water

 Perennial Water

 Rock Outcrop

 Saline Spot

 Sandy Spot

 Severely Eroded Spot

 Sinkhole

 Slide or Slip

 Sodic Spot

 Spoil Area

 Stony Spot

 Very Stony Spot

 Wet Spot

 Other

 Special Line Features

Water Features

 Streams and Canals

Transportation

 Rails

 Interstate Highways

 US Routes

 Major Roads

 Local Roads

Background

 Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service

Web Soil Survey URL:

Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Weld County, Colorado, Northern Part

Survey Area Data: Version 15, Jun 5, 2020

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jul 19, 2018—Aug 10, 2018

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
4	Ascalon fine sandy loam, 0 to 6 percent slopes	5.3	8.0%
20	Cascajo gravelly sandy loam, 5 to 20 percent slopes	21.7	33.0%
54	Platner loam, 0 to 3 percent slopes	6.4	9.7%
63	Tassel loamy fine sand, 5 to 20 percent slopes	16.9	25.7%
65	Terry sandy loam, 3 to 9 percent slopes	15.5	23.6%
Totals for Area of Interest		65.8	100.0%

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT C – Mining plan

(a) Commencement and Duration of Borrow Operation

The borrow operation is for a single specific project. Operations would begin on April 5, 2021 and would be complete at or before December 23, 2021.

This time window includes the following phases:

1. Topsoil salvaging
2. Excavation and hauling of the borrow materials
3. Excavation from the existing road brought back into the borrow hole
4. Closing of the borrow – final grading of the slopes, topsoil placement, and completion of the reclamation plan.

(b) Topsoil replacement depth.

The existing topsoil conditions in the area show an average of 8 inches. This topsoil will be stockpiled and respreads at the end at the depth or thicker.

(c) Overburden

The borrow materials do not have any overlying overburden or waste materials.

(d) Thickness of deposit to be mined

An fifty (50) foot thickness of borrow material will be removed.

(e) Major Components of the mining operation.

The entrance and exit for the permitted site and the area of borrow excavation are the only components of the mining operation.

Once the topsoil has been salvaged and the entrance and exit is constructed, excavation/hauling operations will begin. The borrow material will be excavated using large backhoes/loaders and placed directly into truck-trailer hauling units for transporting to the job site on Lemay Avenue.

Excavation of the borrow materials will proceed in an east to west direction. The side slopes of the final excavation are to be at a maximum gradient of 4:1 (horizontal to vertical). As the borrow material is being removed, the excavation in the area of the final slopes will be done at this 4:1 gradient.

(f) Dimensions of land disturbance.

The area of land disturbance is in a trapezoid configuration. The average width of the trapezoid is 780 feet running east to west and average length is 890 feet running north to south. These dimensions result in an area of 15.5 acres of active mining area.

(g) Water use.

The only water to be used in conjunction with the borrow site operation, will be water applied to the on-site roads for dust control. Approximately 8,000 gallons of water per day will be used for dust control. The source of this supply will be the same as the project's water source along Lemay Avenue in Fort Collins.

(h) Groundwater/surface water occurrence or disturbance.

Ground water will not be encountered during this operation based on borings.

(i) Existing water rights

Water rights will not be affected or impacted by the proposed borrow operation.

(j) Refuse and acid or toxic producing materials.

There are no known refuse, acid or toxic producing materials in the area of the proposed borrow. If they are encountered, borrow operations will cease and the materials will be contained in accordance with applicable laws and regulations.

(k) Measures to minimize disturbance to hydrologic balance, off-site damage and provide for a reclaimed area that has a stable configuration consistent with the proposed future land use.

Hydrologic balance - The proposed borrow operation impacts on the hydrologic balance will be minimal – groundwater should not be encountered (therefore, no dewatering). The reclaimed site will have a pervious cover of straw mulch which will not impact the pervious nature of the underlying sandy soils.

Off-site damage – The boundaries of the excavation area and haul road will be clearly marked to prevent off-site damage during the borrow activities. Through the use of perimeter berms and silt fence to prevent stormwater from running through the disturbed areas, off-site damage due to contaminated stormwater runoff will be prevented. Completion of the reclamation plan for the site will remove the potential for future off-site damage.

Stable configuration – The borrow area's slopes will be finished to a maximum 4:1 slope.

This slope gradient, the features of the reclamation plan and the natural properties of the site's soils will result in a stable configuration of the reclaimed site that be suitable for the intended future use – rangeland.

(l) On-site processing.

There will be no on-site processing of the borrow materials.

(m) Commodities to be extracted and their use

The only commodity to be extracted at this site is the sandy soil. The material will be used for fill purposes on a county highway improvement project along Lemay Avenue.

(n) No incidental products will be mined at the borrow site.

(o) No explosives will be used in the operations at the borrow site.

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT D – Reclamation Plan

At the conclusion of the excavation activities, the site will be reclaimed by grading the excavation slopes to a final gradient and the excavation bottom to a uniform level. The vegetative growth support material, temporarily stored in the southern valley, will be placed on the excavation slopes and bottom. The constructed entrance and exit will be removed and its' disturbed area included in the reclamation activities.

A detailed description of the Reclamation Plan is as follows:

(1)

(a) Overburden replacement

There is no overburden to salvage and/or replace at this operation.

(b) Reclaimed slope gradient

The reclaimed slopes will be constructed to a 4:1 gradient.

(c) Revegetation measures to reclaim the site.

Ames will be utilizing CDI to seed and we will have them follow the reclamation plans the will utilized on the Lemay Realignment.

Prior to the placement and incorporation of the soil amendments, topsoil will be spread over the borrow slopes, bottom and site roadway.

The thickness of the plant growth medium to be replaced is 8 inches. The seedbed will be prepared by utilizing a D6 dozer with rippers to rip the soil prior to seeding. The application method for grass and forb seeding will be

seed drilling. Straw mulch will be used and shall be crimped in two directions.

The revegetation measures would be performed in the fall of 2021.

(d) There will be no features such as ponds, streams, roads or buildings remaining on the borrow area after reclamation.

(e) All features have been previously addressed in the Reclamation Plan.

(2) Cost estimate to reclaim the site.

The point of maximum disturbance to site will be when the excavation activities are finished. Due to the configuration of the borrow, reclamation activities would not begin until that time.

Since the excavation slopes were left at a 4:1 gradient during the borrow removal process, the remaining reclamation work would consist of removing the perimeter berms and placing the topsoil materials over the disturbed areas followed by the application of the recommended soil amendments, seed and mulch.

Topsoil placement will occur during borrow. Excess rangeland topsoil from new Lemay Alignment in Fort Collins will be placed at an estimate of 16,000 CY additional over the final borrow. These costs will be charged to the new Lemay Alignment job.

1. Placement of salvaged topsoil:

Quantity = 42,000 cubic yards

Equipment: Self-loading scraper (similar to CAT 623)

Dozer (similar to CAT D6)
Labor: 2 equipment operators and ½ time foreman

Production rate: 150 cubic yards per hour
Hours required to complete = $42,000/150 = 280$ hours

Equipment costs per hour = \$ 240.00
Labor costs per hour = \$ 150.00
Total per hour = \$ 390.00

Equipment and Labor Total = 280 hours x \$390 = \$109,200

Mobilization: 2 pieces in and out = \$ 1,200.00.

TOTAL for this item = \$ 110,400 or **\$ 2.63/cubic yard.**
(No markup)

2. Seedbed preparation, application of soil amendments, seed and mulch.

The cost of performing these items, based on a quote from CDI is:

Straw mulch	\$ 500/acre
Tackifier	\$ 1100/acre
Seed :	<u>\$ 375/acre</u>
Total =	\$ 1,975/acre

TOTAL for this item = 32.0 acres x \$1,975/acre = \$63,200

Total Cost to reclaim site = \$110,400 + \$63,200 = \$173,600.

Note: CDI will mobilize in a small tractor and a flatbed truck for this operation. The cost of mobilizing this equipment is factored into the cost of CDI's estimate.



101 East 4th Street Road
Greeley, CO 80631

970.356.4710 Office
800.421.4234 Toll Free
970.356.1267 Fax

BuffaloBrandSeed.com
info@BuffaloBrandSeed.com

This letter is written to certify that the below listed seed mix is accurate to its label.

The seed contained in this mix has been duly tested by a fully accredited seed testing lab following rules authorized by the AOSA (Assoc. of Official Seed Analysts). Please find the specifications for the individual seed species listed below.

BUFFALO BRAND DRYLAND PASTURE MIX

Lot # **G-210031**

SPECIES - VARIETY	LOT #	Based on 25 bulk lbs per Acre		Individual Seed Species Info		
		PLS / Acre	BULK /Acre	PURITY %	GERM %	ORIGIN
Dahurian Wildrye, VNS	20-0080..	4.50	5.00	99.96%	90.00%	CAN
Perennial Ryegrass, Amazon	L165-20-400..	4.72	5.00	97.41%	97.00%	OR
Siberian Wheatgrass, Vavilov II	BTS-2036..	4.62	5.00	96.32%	96.00%	WY
Intermediate Wheatgrass, Rush	BTS-2041..	3.49	3.75	95.83%	97.00%	WY
Orchardgrass, Paiute	B38-20-OG22..	3.48	3.75	95.66%	97.00%	OR
Meadow Brome, Cache	BTS-2010..	2.38	2.50	97.32%	98.00%	WY
TOTALS		23.20	25.00			

**Please feel free to contact us directly if you have any questions or comments.
We appreciate your business !!**

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT E –Maps

Exhibit E (1) Mining Plan Map

Exhibit E (2) Reclamation Plan Map

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT F - Other Permits and Licenses.

The following Permits and Licenses are being obtained for this borrow operation:

1. Permit for Stormwater Discharge Associated With Construction Activities from Colorado Department of Public Health and Environment – Water Quality Division.
 - i. Ames has been awarded this permit and it is COR412238

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT G - Source of Legal Right-to-Enter

Ames Construction has obtained the legal right to enter through the property owner, Arlene Burnham. Attached is Ames's property agreement with Arlene.



AGREEMENT

This Agreement is made and entered this 18th day of March, 2021 by and between: Arlene Burnham located at 6932 Weld County Road 110 ("Owner"), and Ames Construction, Inc., a Minnesota Corporation located at 2000 Ames Drive, Burnsville, MN 55306 ("Ames").

A. Owner is the owner of, or legally controls a parcel of land considered Section 6, Township 9N, Range 67W, Weld County, Colorado, further defined as the borrow limits on an agreed upon map (the "Property"); and

B. Ames desires to perform the following operations on the Property for the limited purposes hereinafter described:

1. Excavate, load, haul a minimum of 200,000 Cubic Yards of material;
2. Provide dust control for Ames excavation and Ames hauling operations only;
3. Maintain Ames utilized haul roads;
4. Hours of operation: 7 AM to 8 PM Daily

C. Owner represents and warrants to Ames that it has all requisite authority to, and desires to enter into this Agreement with Ames on the terms provided herein;

Now therefore, in consideration of good and valuable consideration, and of the covenants and conditions hereafter set forth, the parties agrees as follows:

1. **Grant.** Owner hereby grants permission to Ames and its successors and assigns, to have access to the Property for the purposes listed in item B above.

2. **Term.** This Agreement shall be for a term of until December 31, 2022 commencing on its execution.

3. **Payment.**

Owner agrees to accept \$1.75 per CY as its sole consideration for Ames' excavation of material from the Property. Monthly payments shall be made based on truck loads (LD) currently estimated at 13.50 CY/LD. The final CY amount will be based on an initial topographical survey and a final topographical survey showing the final cubic yards of material excavated from the property. Truck load counts shall be provided daily by email and shall be billed monthly.

Owner agrees to accept \$0.50 per CY as its sole consideration for Ames' waste of material to the Property. Monthly payments shall be made based on truck loads (LD) currently estimated at 12.00 CY/LD. Truck load counts shall be provided daily by email and shall be billed monthly.

4. **Ames' Rights.** Ames shall have the right to use so much of the surface and subsurface of the Property as may be reasonably necessary to carry out the purposes of this Agreement and to park equipment overnight so long as such use does not violate any permits, regulations or laws of any federal, state or local agencies.

5. **Removal of Ames' Property.** Ames shall remove all of its tools, equipment or other property from the Property at the termination of this Agreement.

6. **Records and Reports.** Ames shall keep a reasonably accurate record of its operations conducted or related to its business on the Property showing the dates and the amount of materials excavated from the Property.

7. **Rights of Owner.** Owner shall have the right at all reasonable times and at Owner's own risk and expense, to enter into and upon the Property for the purpose of examining and inspecting the same. However, heavy equipment and trucks in use by Ames shall always have the right of way.

8. **Access.** Owner represents and warrants to Ames that it has the right of access, ingress to and egress from the Property without fee or toll.

9. **Federal, State and Local Law.** Ames agrees to comply with all applicable federal, state and local statutes, regulations and ordinances, including but not limited to applicable statutes, regulations and standards relating to excavation of the materials; air, water and land pollution; disposal of liquid, solid and/or hazardous waste; and workers and unemployment compensation.

10. **Indemnification.** Ames shall indemnify and hold harmless Owner and its heirs, successors, and assigns, and the Property, from claims, actions, or causes of action arising out of or relating to damage, or injury, including death of any person, or damage to property of any kind resulting from or connected with the activities of Ames on the Property pursuant to this Agreement or resulting from the use or misuse of the Property by Ames, its agents or employees. However, Ames shall not be required to indemnify or save harmless Owner or his agents, heirs, successors, assigns, relatives and employees from costs or damages to the extent resulting from the negligence or intentional acts of Owner or his agents, contractors, invitees, trespassers, heirs, successors, assigns, or employees.

12. **Taxes.**

12.1 Ames shall not be responsible for any taxes such as occupational taxes, and income taxes that arise as a result of its excavation operation.

12.3 Owner shall be and remain responsible for income taxes and for all property taxes installments of special assessments, mortgages, lease payments, royalties, and all other taxes, duties, liens or encumbrances related to the Property during the term of this Agreement.

13. **Insurance.** Ames shall, at its own expense, maintain policies of insurance written by one or more companies which will insure Ames against liability for injury to or death of persons or loss of or damage to property occurring in or about the Property. The liability coverage under such insurance shall be in the minimum amount of One Million Dollars per injury and One Million Dollars per occurrence and property damage in the amount of One Million Dollars. Ames shall also maintain automobile liability insurance in the amount of One Million Dollars. Ames shall list Arlene Burnham as additionally insured and will provide seller a certificate of insurance showing such coverage at Owner's request.

14. **Licenses and Permits.** Except as otherwise set forth herein, Owner shall be responsible for obtaining all licenses, permits and other such approvals required by applicable governmental entities. Ames shall obtain a mining permit if deemed necessary by the Owner.

15. **Default.**

15.1 The failure of Ames to perform the covenants and conditions on the part of Ames to be kept and performed, in the manner and at the times specified, shall constitute a default by Ames and shall, at the option of Owner, be cause for termination.

15.2 If Owner fails to perform each and all of the covenants and conditions, on the part of the Seller to be kept and performed, in the manner and at the times specified, such shall constitute a default by Owner and shall, at the option of Ames, be cause for termination.

15.3 In the event of such exercise of the option to terminate this Agreement by either party, the non-defaulting party shall mail a notice to the defaulting party stating that this Agreement shall be terminated within sixty (60) days from the date of mailing of said notice. If, within said sixty (60) day period, the default is not corrected, this Agreement shall terminate. In such event, the aggrieved party may pursue specific performance or money damages at their option in the District Court for the County where the Property is located.

16. **Parties Bound.** The provisions of this Agreement shall bind and inure to the benefit of parties hereto, their legal representatives, and their heirs, successors and assigns.

17. **Condition Precedent.** The commencement of Ames' obligations under this Agreement shall not begin until all necessary permits or approvals are obtained.

18. **Law and Venue.** This Agreement shall be governed by, and construed in accordance with the laws of the State where the Property is located.

19. **Entire Agreement.** The parties acknowledge and agree that the provisions contained herein, including all exhibits attached hereto, constitute the entire agreement. No alterations, amendments, changes or modifications, shall be valid unless by an instrument in writing by all the parties with the same formality as this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

OWNER


Signature

Seller's SSN or ITN: 523-46-8533

Witness: 

AMES CONSTRUCTION, INC.

By: 

Its: Project Manager

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT H - Municipalities Within a Two-mile Radius

1. There are no municipalities within a two mile radius of the proposed borrow site.

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT I – Proof of Filing with County Clerk

See attached

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



CONSTRUCTION MATERIALS

SPECIAL (111) OPERATION

RECLAMATION PERMIT APPLICATION FORM

Received
5/4/21
Carly Stoppes

The application for a Construction Materials Special 111 Operation Reclamation Permit contains four major parts: (1) the application form; (2) Exhibits A-L, Addendum 1, and any sections of Exhibit 6.5 (Geotechnical Stability Exhibit), as required by the Office, and outlined in Rules 6.1, 6.2, 6.3, 6.5, and 1.6.2(1)(b); (3) the application fee; (4) the Performance Warranty and if required a Financial Warranty. When you submit your application, be sure to include one (1) **completed, signed and notarized ORIGINAL** and one (1) copy of the completed application form, two (2) copies of Exhibits A-L, Addendum 1, appropriate sections of Exhibit 6.5 (Geotechnical Stability Exhibit), as required, a check for the application fee described under (4) below, and the fully executed Performance Warranty and Financial Warranty, if required. Exhibits should **NOT** be bound or in 3-ring binders; maps should be folded to 8 2" X 11" or 8 2" X 14" size. To expedite processing, please provide the information in the format and order described in this form.

GENERAL OPERATION INFORMATION

Type or print clearly, in the space provided, all information described below

1. **Applicant/operator or company name (name to be used on the permit):**

Ames Construction, Inc.

1.1 Type of organization (corporation, partnership, etc.): Corporation

2. **Operation name (pit, mine or site name):** Burnham Property Borrow

3. **Permitted acreage:** 16.00 Permitted Acres

4. **New Application:** \$898.00 Application Fee

5. **Primary commodity(ies) to be mined:** Fill Dirt

6. **Name of owner to the surface of affected land:** Arlene Burnham

7. **Name of owner to the subsurface rights of affected land:** Arlene Burnham

8. **Type of mining operation:** ☒ Surface ☐ Underground ☐ In-situ

9. **Location information:** The center of the area where the majority of mining will occur:

COUNTY: Weld

PRINCIPAL MERIDIAN (check one):



6th (Colorado)



10th (New Mexico)



Ute

SECTION (write number):

S 6

TOWNSHIP (write number and check direction):

T 9

☒ North

☐ South

RANGE (write number and check direction):

R 67

☐ East

☒ West

QUARTER SECTION (check one):



NE



NW



SE



SW

QUARTER/QUARTER SECTION (check one):



NE



NW



SE



SW

GENERAL DESCRIPTION: (the number of miles and direction from the nearest town and the approximate elevation):

6.5 miles NE of Wellington, CO

Approx Elevation 5600

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT J – Proof of Mailing Notices of Permit Application

Ames Construction Inc. has mailed notices of the permit application to the required parties and the tracking numbers of the submittals are below. (See attached)

NOTICE OF FILING APPLICATION
FOR COLORADO MINED LAND RECLAMATION PERMIT
FOR SPECIAL 111 OPERATION

NOTICE TO THE BOARD OF SUPERVISORS
OF THE LOCAL CONSERVATION DISTRICT
West Greeley Conservation DISTRICT

Ames Construction, Inc (the "Applicant/Operator") has applied for a Special 111 reclamation permit from the Colorado Mined Land Reclamation Board (the "Board") to conduct the extraction of construction materials in Weld County. The attached information is being provided to notify you of the location and nature of the proposed operation. The entire application is on file with the Division of Reclamation, Mining, and Safety (the "Division") and the local county clerk or recorder.

The Applicant/Operator proposes to reclaim the affected land to Rangeland use. Pursuant to Section 34-32.5-116(4)(m), C.R.S., the Board may confer with the local Conservation Districts before approving of the post-mining land use. Accordingly, the Board would appreciate your comments on the proposed operation. Please note that, in order to preserve your right to a hearing before the Board on this application, you must submit written comments on the application within five (5) working days after the application was filed with the Division.

If you would like to discuss the proposed post-mining land use, or any other issue regarding this application, please contact the Division of Reclamation, Mining, and Safety, 1313 Sherman St., Room 215, Denver, Colorado 80203, (303) 866-3567.

NOTE TO APPLICANT/OPERATOR: You **must** attach a copy of the application form to this notice. If this is a notice of a change to a previously filed application you must either attach a copy of the changes, or attach a complete and accurate description of the changes.



Shipment Receipt

Address Information**Ship to:**

WEST GREELEY
CONSERVATION DIST.

4302 9TH STREET RD

GREELEY, CO
80634
US
3033631000

Ship from:

Lori Holdredge

Ames Construction
18450 E. 28th Ave.

Aurora, CO
80011
US
3033631000

Shipment Information:

Tracking no.: 773211881470

Ship date: 03/19/2021

Estimated shipping charges: 11.32 USD

Package Information

Pricing option: FedEx Standard Rate

Service type: Standard Overnight

Package type: FedEx Envelope

Number of packages: 1

Total weight: 1 LBS

Declared Value: 1.00 USD

Special Services:

Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information:

Bill transportation to: Ames Construction-028

Your reference:

P.O. no.:

Invoice no.:

Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.

The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

NOTICE OF FILING APPLICATION
FOR COLORADO MINED LAND RECLAMATION PERMIT
FOR SPECIAL 111 OPERATION

NOTICE TO THE BOARD OF COUNTY COMMISSIONERS
Weld COUNTY

Ames Construction, Inc (the "Applicant/Operator") has applied for a Special 111 reclamation permit from the Colorado Mined Land Reclamation Board (the "Board") to conduct the extraction of construction materials in Weld County. The attached information is being provided to notify you of the location and nature of the proposed operation. The entire application is on file with the Division of Reclamation, Mining, and Safety (the "Division") and the local county clerk or recorder.

The Applicant/Operator proposes to reclaim the affected land to Rangeland use. Pursuant to Section 34-32.5-116(4)(m), C.R.S., the Board may confer with the local Board of County Commissioners before approving of the post-mining land use. Accordingly, the Board would appreciate your comments on the proposed operation. Please note that, in order to preserve your right to a hearing before the Board on this application, you must submit written comments on the application within five (5) working days after the application was filed with the Division.

If you would like to discuss the proposed post-mining land use, or any other issue regarding this application, please contact the Division of Reclamation, Mining, and Safety, 1313 Sherman St., Room 215, Denver, Colorado 80203, (303) 866-3567.

NOTE TO APPLICANT/OPERATOR: You must attach a copy of the application form to this notice. If this is a notice of a change to a previously filed application you must either attach a copy of the changes, or attach a complete and accurate description of the changes.



Shipment Receipt

Address Information

Ship to:

WELD COUNTY
COMMISSIONERS

1150 O STREET

GREELEY, CO

80632

US

3033631000

Ship from:

Lori Holdredge

Ames Construction
18450 E. 28th Ave.

Aurora, CO

80011

US

3033631000

Shipment Information:

Tracking no.: 773211950382

Ship date: 03/19/2021

Estimated shipping charges: 11.32 USD

Package Information

Pricing option: FedEx Standard Rate

Service type: Standard Overnight

Package type: FedEx Envelope

Number of packages: 1

Total weight: 1 LBS

Declared Value: 1.00 USD

Special Services:

Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information:

Bill transportation to: Ames Construction-028

Your reference:

P.O. no.:

Invoice no.:

Department no.:

Thank you for shipping online with FedEx ShipManager at [fedex.com](https://www.fedex.com).

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details.

The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.

Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT K – Terms of Governmental Contract

Ames Construction Inc. is the contractor for the Lemay Ave
Realignment job in Fort Collins (See attached)



SERVICES AGREEMENT WORK ORDER TYPE

THIS AGREEMENT made and entered into the day and year set forth below, by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and AMES CONSTRUCTION, INC. hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Services to be Performed.

- a. This Agreement shall constitute the basic agreement between the parties for services for 9227 CMGC Services for Lemay Ave Realignment over the Burlington Northern Santa Fe Tracks and Vine Dr. The conditions set forth herein shall apply to all services performed by the Service Provider on behalf of the City and particularly described in Work Orders agreed upon in writing by the parties from time to time. Such Work Orders, samples of which are attached hereto as Exhibit A & B, consisting of one (1) page and eighty-nine (89) pages and incorporated herein by this reference, shall include a description of the services to be performed, the location and time for performance, the amount of payment, any materials to be supplied by the City and any other special circumstances relating to the performance of services. A Scope of Services is attached hereto as Exhibit D, consisting of ten (10) pages, and incorporated herein by this reference.

The only services authorized under this Agreement are those which are performed after receipt of such Work Order, except in emergency circumstances where oral work requests may be issued. Oral requests for emergency actions will be confirmed by issuance of a written Work Order within two (2) working days. Irrespective of references in Exhibit A to certain named third parties, Service Provider shall be solely responsible for performance of all duties hereunder.

- b. The City may, at any time during the term of a particular Work Order and without invalidating such Work Order, make changes to the scope of the particular services. Such changes shall be agreed upon in writing by the parties by Change Order, a sample of which is attached hereto as Exhibit C, consisting of one (1) page and incorporated herein by this reference.

2. Changes in the Work. The City reserves the right to independently bid any services rather than issuing work to the Service Provider pursuant to this Agreement. Nothing within this Agreement shall obligate the City to have any particular service performed by the Service Provider.

3. Time of Commencement and Completion of Services. The services to be performed



pursuant to this Agreement shall be initiated as specified by each written Work Order or oral emergency service request. Oral emergency service requests will be acted upon without waiting for a written Work Order. Time is of the essence.

4. Contract Period. This Agreement shall commence February 15, 2021 and shall continue in full force and effect until February 14, 2022, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. Written notice of renewal shall be provided to the Service Provider and mailed no later than thirty (30) days prior to contract end.
5. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.
6. Early Termination by City/Notices. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be mailed at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following address:

Service Provider:	City:	Copy to:
Ames Construction Inc.	City of Fort Collins	City of Fort Collins
Attn: Trent Irick	Attn: Dan Woodward	Attn: Purchasing Dept.
18450 East 28 th Ave.	PO Box 580	PO Box 580
Aurora, CO 80011	Fort Collins, CO 80522	Fort Collins, CO 80522

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the termination date, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

7. Contract Sum. This is an open-end indefinite quantity Agreement with no fixed price. The actual amount of work to be performed will be stated on the individual Work Orders. The City makes no guarantee as to the number of Work Orders that may be issued or the actual amount of services which will in fact be requested.
8. Payments.
 - a. The City agrees to pay and the Service Provider agrees to accept as full payment for all work done and all materials furnished and for all costs and expenses incurred in performance of the work the sums set forth for the hourly labor rate and material costs,



with markups, stated within the Compensation section, attached hereto as Exhibit E, consisting of thirteen (13) pages, and incorporated herein by this reference.

Payment shall be made by the City Net 30 days from the date of the invoice and upon acceptance of the work by the City and upon the Service Provider furnishing satisfactory evidence of payment of all wages, taxes, supplies and materials, and other costs incurred in connection with the performance of such work.

9. City Representative. The City's representative will be shown on the specific Work Order and shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the work requested. All requests concerning this Agreement shall be directed to the City Representative.
10. Independent Contractor. It is agreed that in the performance of any services hereunder, the Service Provider is an independent contractor responsible to the City only as to the results to be obtained in the particular work assignment and to the extent that the work shall be done in accordance with the terms, plans and specifications furnished by the City.
11. Subcontractors. Service Provider may not subcontract any of the Work set forth in the Exhibit A, Statement of Work without the prior written consent of the city, which shall not be unreasonably withheld. If any of the Work is subcontracted hereunder (with the consent of the City), then the following provisions shall apply: (a) the subcontractor must be a reputable, qualified firm with an established record of successful performance in its respective trade performing identical or substantially similar work, (b) the subcontractor will be required to comply with all applicable terms of this Agreement, (c) the subcontract will not create any contractual relationship between any such subcontractor and the City, nor will it obligate the City to pay or see to the payment of any subcontractor, and (d) the work of the subcontractor will be subject to inspection by the City to the same extent as the work of the Service Provider.
12. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the city.
13. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under the Agreement or of any cause of action arising out of the performance of this Agreement.
14. Warranty.
 - a. Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.



- b. Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
 - c. Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.
- 15. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.
- 16. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.
- 17. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire Agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representative, successors and assigns of said parties.
- 18. Indemnity/Insurance.
 - a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever, brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.
 - b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.
 - c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within



Exhibit F, consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder shall deliver to the City's Purchasing Director, P. O. Box 580, Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the city.

19. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.
20. Law/Severability. This Agreement shall be governed in all respect by the laws of the State of Colorado. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction such holding shall not invalidate or render unenforceable any other provision of this Agreement.
21. Prohibition Against Employing Illegal Aliens. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Service Provider represents and agrees that:
 - a. As of the date of this Agreement:
 - 1) Service Provider does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and
 - 2) Service Provider will participate in either the e-Verify program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "e-Verify Program") or the Department Program (the "Department Program"), an employment verification program established pursuant to Section 8-17.5-102(5)(c) C.R.S. in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement.
 - b. Service Provider shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.
 - c. Service Provider is prohibited from using the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
 - d. If Service Provider obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Service Provider shall:
 - 1) Notify such subcontractor and the City within three days that Service Provider has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and



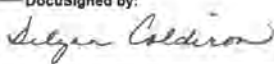
- 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Service Provider shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
 - e. Service Provider shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.
 - f. If Service Provider violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Service Provider shall be liable for actual and consequential damages to the City arising out of Service Provider's violation of Subsection 8-17.5-102, C.R.S.
 - g. The City will notify the Office of the Secretary of State if Service Provider violates this provision of this Agreement and the City terminates the Agreement for such breach.
22. Dust Control. The Service Provider shall abide by the City of Fort Collins "Dust Control and Prevention Manual," which is available for public download at <https://www.fcgov.com/airquality/pdf/dust-prevention-and-control-manual.pdf>, and is incorporated herein by this reference. The City of Fort Collins has implemented this manual for all projects performed for the City of Fort Collins or located within the City of Fort Collins City limits.
 23. Haul Routes. All trucks used for work contracted by the City utilizing asphalt from the asphalt plant located at 1800 North Taft Hill Road may only enter North Taft Hill Road from the North using CR 54 G and only exit the site on North Taft Hill Road to the North to CR 54G.
 24. Special Provisions. Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in Exhibit G - Confidentiality, consisting of one (1) page, attached hereto and incorporated herein by this reference.



THE CITY OF FORT COLLINS, COLORADO

DocuSigned by:
By: 
Gerry Paul
Purchasing Director
DATE: 2/24/2021

ATTEST:

DocuSigned by:

City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Adam Stephens
Assistant City Attorney II

AMES CONSTRUCTION, INC.

DocuSigned by:
By: 
Printed: Trent Irick
Title: Vice President
CORPORATE PRESIDENT OR VICE PRESIDENT
Date: 2/22/2021



EXHIBIT A WORK ORDER FORM

PURSUANT TO A MASTER AGREEMENT BETWEEN
THE CITY OF FORT COLLINS
AND
AMES CONSTRUCTION, INC.

WORK ORDER NUMBER: _____

PROJECT TITLE: _____

ORIGINAL BID/RFP NUMBER & NAME: _____

MASTER AGREEMENT EFFECTIVE DATE: February 15, 2021

WORK ORDER COMMENCEMENT DATE: _____

WORK ORDER COMPLETION DATE: _____

MAXIMUM FEE: (time and reimbursable direct costs): _____

PROJECT DESCRIPTION/SCOPE OF SERVICES: _____

Service Provider agrees to perform the services identified above and on the attached forms in accordance with the terms and conditions contained herein and in the Master Agreement between the parties. In the event of a conflict between or ambiguity in the terms of the Master Agreement and this Work Order (including the attached forms) the Master Agreement shall control.

The attached forms consisting of _____ (_____) page(s) are hereby accepted and incorporated herein, by this reference, and Notice to Proceed is hereby given after all parties have signed this document.

SERVICE PROVIDER: _____
Name, Title

Date: _____

ACCEPTANCE: _____
Name, Project Manager

Date: _____

REVIEWED: _____
Name, Buyer or Senior Buyer

Date: _____

ACCEPTANCE: _____
Gerry Paul, Purchasing Director
(if greater than \$60,000)

Date: _____



EXHIBIT B
WORK ORDER FORM (Construction over \$100,000)



CONSTRUCTION WORK ORDER
FOR

**9227 CM/GC SERVICES FOR LEMAY AVE
REALIGNMENT OVER THE BNSF RAILROAD
TRACKS AND VINE DR.**

WORK ORDER NO. _____

TITLED

(WORK ORDER TITLE)

DATE: _____

CONTRACTOR: Ames Construction, Inc.



TABLE OF CONTENTS

AGREEMENT FORMS

00525	Work Order & Notice of Award
00530	Work Order Notice to Proceed
00600	Bonds and Certificates
00610	Performance Bond
00615	Payment Bond
00630	Certificate of Insurance
00635	Certificate of Substantial Completion
00640	Certificate of Final Acceptance
00650	Lien Waiver Release (CONTRACTOR)
00660	Consent of Surety
00670	Application for Exemption Certificate

CONDITIONS OF THE CONTRACT

00700	General Conditions Exhibit GC-A GC-A1 - GC-A2
00800	Supplementary Conditions
00900	Addenda, Modifications and Payment
00950	Work Order Change Order Form
00960	Application for Payment



SECTION 00500

CONSTRUCTION WORK ORDER AGREEMENT FORMS

00525 Work Order, Notice of Award & Bid Schedule

00530 Work Order Notice to Proceed



SECTION 00525
WORK ORDER, NOTICE OF AWARD AND BID SCHEDULE

TO: _____

WORK ORDER # & TITLE: _____

PURCHASE ORDER: _____

ORIGINAL BID/RFP # & TITLE: _____

DESIGN ENGINEER: _____

ENGINEER: _____

NOTICE OF AWARD DATE: _____

OWNER: City of Fort Collins (hereinafter referred to as OWNER)

1. **WORK.** You are hereby notified that your bid dated _____, for the above Work Order has been considered. Pursuant to your AGREEMENT with OWNER dated _____, you have been awarded a Work Order for this Work Order Description:
 - A. See Section 01100 – Summary of Work.
2. **CONTRACT PRICE, BONDS AND CERTIFICATES.** The price of your Work Order is _____ (\$_____). Pursuant to the AGREEMENT and the Contract Documents, Performance and Payment Bonds and insurance are required.
3. **CONTRACT TIMES.** Pursuant to the AGREEMENT and the Contract Documents, the date for Substantial Completion of this Work Order is _____, and after Substantial Completion, the date for Final Completion is _____.
4. **LIQUIDATED DAMAGES.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expenses and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as penalty) CONTRACTOR shall pay OWNER the amounts set forth hereafter.
 1. Substantial Completion: _____ (\$_____) for each calendar day or fraction thereof that expires after _____ until the work is Substantially Complete.
 2. Final Acceptance: After Substantial Completion _____ (\$_____) for each calendar day or fraction thereof that expires after the _____ calendar day period for Final Payment and Acceptance until the Work is ready for Final Payment and Acceptance.
5. **PAYMENT PROCEDURES.** CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.



5.1 **PROGRESS PAYMENTS.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Application for Payment as recommended by ENGINEER, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.6 of the General Conditions and in the case of Unit Price Work based on the number of units completed, and in accordance with the General Requirements concerning Unit Price Work.

5.1.1 Prior to Substantial Completion, Owner will be entitled to withhold as contract retainage five percent (5%) of each progress payment, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions. If, in the sole discretion of Owner, on recommendation of Engineer, Owner determines that the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed. 95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions) may be included in the application Section 00960.

5.1.2 Upon Substantial Completion payment will be made in an amount sufficient, if necessary, to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine or OWNER may withhold in accordance with paragraph 14.7 of the General Conditions or as provided by law.

5.2 **FINAL PAYMENT.** Upon Final Completion and Acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

6. **CONTRACTOR'S REPRESENTATION.** In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

6.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions.

6.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to



supplement those referred to in paragraph 6.2 above) which pertain to the subsurface or physical condition at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 6.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents, including specifically the provision of paragraph 4.3. of the General Conditions.
- 6.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

7. CONTRACT DOCUMENTS.

- 7.1 The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work consist of the General Conditions, Supplementary Conditions, those items included in the definition of "Contract Documents" in Article 1.10 of the General Conditions, and such other items as are referenced in this Article 7, all of which are incorporated herein by this reference.
- 7.2 Forms for use by CONTRACTOR in performing the Work and related actions in carrying out the terms of this Agreement are deemed Contract Documents and incorporated herein by this reference, and include, but are not limited to, the following:
 - 7.2.1 Certificate of Substantial Completion
 - 7.2.2 Certificate of Final Acceptance
 - 7.2.3 Lien Waiver Releases
 - 7.2.4 Consent of Surety
 - 7.2.5 Application for Exemption Certificate
 - 7.2.6 Application for Payment
- 7.3 Drawings, consisting of a cover sheet and sheets numbered as follows:



The Contract Drawings shall be stamped "Final for Construction" and dated. Any revisions made shall be clearly identified and dated.

- 7.4 The Contract Documents also include all written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.
- 7.5 There are no Contract Documents other than those listed or incorporated by reference in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

8. MISCELLANEOUS

- 8.1. Terms used in this Agreement which are defined in Article I of the General Conditions shall have the meanings indicated in the General Conditions.
- 8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but not without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Document.
- 8.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, Agreement and obligations contained in the Contract Document.

- 9. **EXECUTION.** Three (3) copies of this proposed Work Order & Notice of Award, and accompanying amendments or supplements to the Contract Documents (except any applicable Drawings) incorporated herein, are provided. Three (3) sets of any applicable Drawings will be delivered separately or otherwise made available to you immediately. You must comply with the following conditions precedent within fifteen (15) days of the date of this Notice of Award, that is, by ____.

- A. You must deliver to OWNER three (3) fully-executed counterparts of this Work Order, including all amendments or supplements to the Contract Documents incorporated herein. Each Work Order must bear your signature as provided.
- B. You must deliver with the executed Work Order the Contract Security (Bonds) and insurance, as specified in the Agreement, this Work Order, the General Conditions (Article 5.1) and the Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your Bid abandoned and to annul this Work Order & Notice of Award. Within ten (10) days after you comply with those conditions, OWNER will return to you one (1) fully-signed counterpart of this Work Order with any amendments or supplements to the Contract Documents attached.



CONTRACTOR'S NOTICE OF AWARD REPRESENTATION & EXECUTION:

CONTRACTOR agrees to perform the services identified above, in accordance with the terms and conditions contained herein and in the AGREEMENT dated _____, and the NOTICE OF AWARD dated _____, between the parties. In the event of a conflict between or ambiguity in the terms of the AGREEMENT or specific Work Orders, the AGREEMENT shall control.

CONTRACTOR: G.L. Ames Construction, Inc.

By: _____

Date: _____

Name: _____

Title: _____



OWNER'S ACCEPTANCE & EXECUTION:

This Work Order and the attached Contract Documents are hereby accepted and incorporated herein by this reference and the attached Notice to Proceed is hereby given.

ACCEPTANCE: _____ Date: _____
 _____, Engineer

OWNER: CITY OF FORT COLLINS

ACCEPTANCE: _____ Date: _____
 Darin Atteberry, City Manager
 (if greater than \$1,000,000)

ACCEPTANCE: _____ Date: _____
Gerry Paul, Purchasing Director
(if greater than \$60,000)

APPROVED AS TO FORM: _____ Date: _____

ATTEST: _____ Date: _____



BID SCHEDULE



**SECTION 00530
WORK ORDER NOTICE TO PROCEED**

NOTICE TO PROCEED DATE: _____

WORK ORDER TITLE: _____

WORK ORDER NUMBER: _____

ORIGINAL BID/RFP # & TITLE: _____

TO: _____
 Attn: _____

This notice is to advise you:

That the Work Order and all amendments and supplements to the Contract Documents covering the above described Work have been fully executed by the CONTRACTOR and the OWNER. That the required CONTRACTOR's Performance and Payment Bonds and insurance have been received by the OWNER. That the OWNER has approved the said Work Order and Contract Documents.

Therefore, as the CONTRACTOR for the above described Work, you are hereby authorized and directed to proceed within _____ (_____) calendar days from receipt of this notice as required by the Work Order and the AGREEMENT.

The dates for Substantial Completion and Final Acceptance shall be _____, and _____, respectively.

Dated this _____ day of _____, _____.

CITY OF FORT COLLINS (OWNER)

By: _____

 Name & Title

ACKNOWLEDGMENT OF NOTICE

Receipt of the above Work Order Notice to Proceed is hereby acknowledged this _____ day of _____, _____.

_____ (CONTRACTOR)

By: _____

 Name & Title



**SECTION 00600
BONDS AND CERTIFICATES**

- 00610 Performance Bond
- 00615 Payment Bond
- 00630 Certificate of Insurance
- 00635 Certificate of Substantial Completion
- 00640 Certificate of Final Acceptance
- 00650 Lien Waiver Release (CONTRACTOR)
- 00651 Lien Waiver Release (SUBCONTRACTOR)
- 00660 Consent of Surety
- 00670 Application for Exemption Certificate



SECTION 00610 PERFORMANCE BOND

Bond No _____

KNOW ALL MEN BY THESE PRESENTS: that

(Firm)

(Address)

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as the "Principal" and

(Firm)

(Address)

hereinafter referred to as "the Surety", are held and firmly bound unto City of Fort Collins, 300 LaPorte Ave, Fort Collins, Colorado 80522 a (Municipal Corporation) hereinafter referred to as the "OWNER", in the penal sum of _____ (\$_____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Agreement with the OWNER, dated the _____ day of _____, _____, for (original bid/rfp # & name) a copy of which is hereto attached and made a part hereof, for the performance of The City of Fort Collins Work Order, titled _____, Work Order Number _____, dated the _____ day of _____, _____, a copy of which is hereto attached and made a part hereof.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Work Order and Agreement during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without Notice to the Surety and during the life of the guaranty period, and if the Principal shall satisfy all claims and demands incurred under such Work Order and Agreement, and shall fully indemnify and save harmless the OWNER from all cost and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Work Order and Agreement or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Work Order and Agreement or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the Surety Company must be authorized to transact business in the State of Colorado and be acceptable to the OWNER.



IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, _____.

IN PRESENCE OF:

Principal

(Title)

(Title)

(Corporate Seal)

(Address)

IN PRESENCE OF:

Other Partners

By: _____

By: _____

IN PRESENCE OF:

Surety

By: _____

(Address)

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Agreement. If CONTRACTOR is Partnership, all partners should execute Bond.



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SECTION 00615 PAYMENT BOND

Bond No _____

KNOW ALL MEN BY THESE PRESENTS: that

(Firm)
(Address)

(an Individual), (a Partnership), (a Corporation), hereinafter referred to as the "Principal" and

(Firm)
(Address)

hereinafter referred to as "the Surety", are held and firmly bound unto City of Fort Collins, 300 LaPorte Ave, Fort Collins, Colorado 80522 a (Municipal Corporation) hereinafter referred to as the "OWNER", in the penal sum of _____ (\$_____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the Principal entered into a certain Agreement with the OWNER, dated the _____ day of _____, _____, for (original bid/rfp # & name), a copy of which is hereto attached and made a part hereof, for the performance of The City of Fort Collins Work Order, titled _____, Work Order Number _____, dated the _____ day of _____, _____, a copy of which is hereto attached and made a part hereof.

NOW, THEREFORE, if the Principal shall make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such Work Order and Agreement and any authorized extension or modification thereof, including all amounts due for materials, lubricants, repairs on machinery, equipment and tools, consumed, rented or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Work Order and Agreement or to the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Work Order and Agreement or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the Surety Company must be authorized to transact business in the State of Colorado and be acceptable to the OWNER.



IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, _____.

IN PRESENCE OF:

Principal

(Title)

(Title)

(Corporate Seal)

(Address)

IN PRESENCE OF:

Other Partners

By: _____

By: _____

IN PRESENCE OF:

Surety

By: _____

(Address)

(Surety Seal)

NOTE: Date of Bond must not be prior to date of Agreement. If CONTRACTOR is Partnership, all partners should execute Bond.



SECTION 00630 CERTIFICATE OF INSURANCE

CONTRACTOR shall insert his own standard form for Certificate of Insurance in accordance with the following:

1. The Contractor will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Contractor shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not reduce coverage or limits and will not be cancelled, except after thirty (30) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Contractor, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Contractor's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:
 - A. Workers' Compensation & Employer's Liability. The Contractor shall maintain during the life of this Agreement for all of the Contractor's employees engaged in work performed under this agreement:
 1. Workers' Compensation insurance with statutory limits as required by Colorado law.
 2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.
 - B. Commercial General & Vehicle Liability. The Contractor shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$1,000,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Contractor shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.



SECTION 00635
CERTIFICATE OF SUBSTANTIAL COMPLETION

TO: CITY OF FORT COLLINS (OWNER)

WORK ORDER # & TITLE:

DATE OF SUBSTANTIAL COMPLETION:

ORIGINAL BID/RFP # & TITLE:

PROJECT OR SPECIFIED PART SHALL
INCLUDE:

LOCATION: Fort Collins, Colorado

OWNER: City of Fort Collins

CONTRACTOR:

WORK ORDER DATE:

The Work performed under this Work Order, pursuant to the Contract Documents, has been inspected by authorized representatives of the OWNER, CONTRACTOR, and the ENGINEER and the project (or specified part of the project, as indicated above) is hereby declared to be substantially completed on the above date.

A tentative list of items to be completed or corrected is appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the CONTRACTOR to complete all the Work in accordance with the Contract Documents.

By: _____
PROJECT MANAGER AUTHORIZED REPRESENTATIVE DATE

The CONTRACTOR accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the tentative list within the time indicated.

CONTRACTOR _____ By: _____
 AUTHORIZED REPRESENTATIVE _____ DATE _____

The OWNER accepts the project or specified area of the project as substantially complete and will assume full possession of the project or specified area of the project at 12:01 a.m., on _____, The responsibility for heat, utilities, security, and insurance under the Contract Documents shall be as set forth under "Remarks" below.

CITY OF FORT COLLINS
OWNER

By: _____
AUTHORIZED REPRESENTATIVE

DATE

REMARKS:



**SECTION 00640
CERTIFICATE OF FINAL ACCEPTANCE**

DATE: _____, _____

TO: _____

Gentlemen:

You are hereby notified that on the _____ day of _____, _____, the City of Fort Collins, Colorado, has accepted the Work completed by _____, for the City of Fort Collins Work Order, titled _____, Work Order Number _____ under (original bid/rfp # & name).

A check is attached hereto in the amount of \$_____ as Final Payment for all Work done, subject to the terms of the Contract Documents, including the Work Order, which is dated _____, and the AGREEMENT, which is dated_____.

In conformance with the Work Order and Contract Documents for this project, your obligations and guarantees will continue for the specified time from the following date:

_____, _____

Sincerely,

City of Fort Collins
OWNER

By: _____

Name & Title

ATTEST: _____

Name & Title



**SECTION 00650
LIEN WAIVER RELEASE
(CONTRACTOR)**

TO: City of Fort Collins, Colorado (OWNER)

FROM: _____ (CONTRACTOR)

WORK ORDER TITLE: _____

WORK ORDER NUMBER: _____

ORIGINAL BID/RFP # & TITLE: _____

1. The CONTRACTOR acknowledges having received payment, except retainage from the OWNER for all work, labor, skill and material furnished, delivered and performed by the CONTRACTOR for the OWNER or for anyone in the construction, design, improvement, alteration, addition or repair of the above described project.
2. In consideration of such payment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CONTRACTOR voluntarily waives all rights, claims and liens, including but not limited to, mechanic's liens, Miller Act claims (40 U.S.C.A. 270 a and b), stop notices, equitable liens and labor and material bond rights which the CONTRACTOR may now or may afterward have, claim or assert for all and any work, labor, skill or materials furnished, delivered or performed for the construction, design, improvement, alteration, addition or repair of the above described project, against the OWNER or its officers, agents, employees or assigns, against any fund of or in the possession or control of the OWNER, against the project or against all land and the buildings on and appurtenances to the land improved by the project.
3. The CONTRACTOR affirms that all work, labor and materials, furnished, delivered or performed to or for the construction, design, improvement, alteration, addition or repair of the project were furnished, delivered or performed by the CONTRACTOR or its agents, employees, and servants, or by and through the CONTRACTOR by various Subcontractors or materialmen or their agents, employees and servants and further affirms the same have been paid in full and have released in full any and all existing or possible future mechanic's liens or rights or claims against the project or any funds in the OWNER'S possession or control concerning the project or against the OWNER or its officers, agents, employees or assigns arising out of the project.
4. The CONTRACTOR agrees to defend and hold harmless the OWNER, the lender, if any, and the Surety on the project against and from any claim hereinafter made by the CONTRACTOR's Subcontractors, materialmen, employees, servants, agents or assigns against the project or against the OWNER or its officers, employees, agents or assigns arising out of the project for all loss, damage and costs, including reasonable attorneys fees, incurred as a result of such claims.
5. The parties acknowledge that the description of the project set forth above constitutes an adequate description of the property and improvements to which this Lien Waiver Release pertains. It is further acknowledged that this Lien Waiver Release is for the benefit of and



may be relied upon by the OWNER, the lender, if any, and Surety on any labor and material bonds for the project.

Signed this _____ day of _____, ____.

CONTRACTOR: _____

By: _____

Name & Title

ATTEST:

Secretary

STATE OF COLORADO)
)ss.
COUNTY OF LARIMER)

Subscribed and sworn to before me this _____ day of _____, _____, by

Witness my hand and official seal.

My Commission Expires: _____

Notary Public



**SECTION 00660
CONSENT OF SURETY**

TO: City of Fort Collins, Colorado (hereinafter referred to as the "OWNER")

CONTRACTOR: _____

WORK ORDER # & TITLE: _____

ORIGINAL BID/RFP # & TITLE: _____

CONTRACT DATE: _____

WORK ORDER DATE: _____

In accordance with the provisions of the Work Order and Contract between the OWNER and the CONTRACTOR as indicated above, for the Work Order titled _____ on bond of _____, (Surety)

hereby approves of the Final Payment to the CONTRACTOR, and agrees that Final Payment to the CONTRACTOR shall not relieve the Surety Company of any of its obligations to the OWNER, as set forth in the said Surety Company's Bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this _____ day of _____, _____.

(Surety Company)

By: _____
(Name) Attorney-in-Fact

ATTACH: Power of Attorney and Certificate of Authority of Attorney(s)-in-Fact.



SECTION 00670 APPLICATION FOR EXEMPTION CERTIFICATE

Official Purchasing Document
Last updated 10/2017

GP



DR 0172 (05/01/18)
COLORADO DEPARTMENT OF REVENUE
Denver CO 80261 - 0009
(303) 236-SERV (7378)

Contractor Application for Exemption Certificate

This exemption does not include or apply to the purchase or rental of equipment, supplies, and materials which are purchased, rented, or consumed by the contractor and which do not become a part of the structure, highway, road, street, or other public works **owned and used** by the exempt organization.

Any unauthorized use of the exemption certificate will result in revocation of your exemption certificate and other penalties provided by law. A separate certificate is required for each contract.

Send completed forms to: Colorado Department of Revenue, Denver, CO 80261-0009

Failure to accurately complete all boxes of the form or provide all supporting documentation will cause the application to be denied.

For Department Use Only. Do not write in this section.

Contractor/Account No. 89-		Period (MM/YY-MM/YY)	
Must be completed by applicant			
Contractor Information			
Trade name/DBA			
Owner, partner or corporate last name		First Name	Middle Initial
Mailing Address	City	State	Zip
E-Mail Address	FEIN	Bid amount for your contract (Must match to the penny) \$	
Fax number	Business Phone number		
Colorado withholding tax account number (See instructions)	☐ Subsidiary	☐ Subcontractors	☐ Staffing Agency
☐ No employees/subcontractors (see below)			
No Employees/Subcontractors. (Provide explanation or attach a letter of explanation).			
Exemption Information			
Copies of contract or agreement page, identifying the contracting parties, bid amount, type of work, and signatures of contracting parties must be attached			
Name of exempt organization (as show on contract)		Exempt organization's number 98	
Address of exempt organization	City	State	Zip
Principal contact at exempt organization-Last Name		First Name	Middle Initial
Housing Authority (if applicable)		Name of Project (if applicable)	
Owner of the Project (if applicable)			
Physical location of project site (give actual address when applicable and Cities and/or County (ies) where project is located)			
City	State	Zip	Principal contact's telephone number
Scheduled construction start date (MM/DD/YY)		Estimated completion date (MM/DD/YY)	
I declare under penalty of perjury in the second degree that the statements made in this application are true and complete to the best of my knowledge			
Signature of the business owner, partner or corporate officer		Title of corporate officer	Date (MM/DD/YY)

**DO NOT SEND**DR 0172 (05/01/18)
COLORADO DEPARTMENT OF REVENUE
Denver CO 80201 - 0008
(303) 238-SERV (7378)

Special Notice

Purpose of this application

The exemption certificate for which you are applying must be used only for the purpose of purchasing construction and building materials for the exempt project described below. This exemption does not include or apply to the purchase or rental of equipment, supplies, and materials which are purchased, rented, or consumed by the contractor and which do not become a part of the structure, highway, road, street, or other public works **owned and used** by the exempt organization.

Any unauthorized use of the exemption certificate will result in revocation of your exemption certificate and other penalties provided by law.

A separate certificate is required for each project.

Colorado Withholding Account Number

A Colorado Account Number (CAN) should be provided in this field. Applications that are left blank or list N/A will not be processed and will be returned.

Subsidiary:

This box is marked when a subsidiary is using the parents withholding account number (only when it does not have its own.) Provide the parents CAN.

Subcontractor:

This box is marked when a contractor does not have employees of their own and outsources their employees through a subcontractor. List the subcontractor or subcontractors name and CAN(s).

Staffing Agency:

This box is marked when a contractor does not have employees of their own and outsources their employees through a staffing agency. Provide the Staffing Agency's name and CAN.

No employees/no subcontractors:

For contractors with no employees, no subcontractors/staffing agencies:

Write no employees in the (CAN) box and provide explanation. For example, I have no employees or subcontractors and perform all of the work myself.

Subcontractors:

Subcontractors will not be issued Certificates of Exemption by the Department of Revenue. Upon receipt of the Certificate, the prime contractor should make a copy for each subcontractor involved in the project and complete it by filling in the subcontractor's name and address and signing it. The original Certificate should always be retained by the prime contractor. Copies of all Certificates that the prime contractor issued to subcontractors should be kept at the prime contractor's place of business for a minimum of three years and be available for inspection in the event of an audit.

See FYI Sales 95 for information about qualifying affordable housing projects.

To avoid a returned application ensure you have done the following:

- ☐ Accurately completed all applicable boxes of the form.
- ☐ Provided a copy of the Contract or agreement page. The Contract or Agreement page lists the type and scope of work.
- ☐ Bid amount on Contract or Agreement page matches the amount listed on the application (to the penny).
- ☐ Contract or Agreement page contains the signatures of the contracting parties.
- ☐ The form DR0172 (application) is signed.
- ☐ The exempt organizations number was provided and is correct.



GP

SECTION 00700

GENERAL CONDITIONS



GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

These GENERAL CONDITIONS have been developed by using the STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT prepared by the Engineers Joint Contract Documents Committee, EJCDC No. 1910-8 (1990 Edition), as a base. Changes to that document are shown by underlining text that has been added and striking through text that has been deleted.

**EJCDC GENERAL CONDITIONS 1910-8 (1990 EDITION)
WITH CITY OF FORT COLLINS MODIFICATIONS (REV 9/99)**



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GENERAL CONDITIONS

ARTICLE 1-DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.

1.2. *Agreement*--The written contract between OWNER and CONTRACTOR covering the Work to be performed, other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3. *Application for Payment*--The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.5. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.6. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.7. *Bidding Requirements*--The advertisement or invitation to Bid, instructions to bidders, and the Bid form.

1.8. *Bonds*--Performance and Payment bonds and other instruments of security.

1.9. *Change Order*--A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

1.10. *Contract Documents*--The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the

same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1 and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1 and 4.2.2 are not Contract Documents.

1.11. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

1.12. *Contract Times*--The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.

1.13. *CONTRACTOR*--The person, firm or corporation with whom OWNER has entered into the Agreement.

1.14. *defective*--An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

1.15. *Drawings*--The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

1.16. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.17. *ENGINEER*--The person, firm or corporation named as such in the Agreement.

1.18. *ENGINEER's Consultant*--A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.19. *Field Order*--A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.



1.20. *General Requirements*—Sections of Division 1 of the Specifications.

1.21. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.22 a. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.22 b. *Legal Holidays*—shall be those holidays observed by the City of Fort Collins.

1.23. *Liens*—Liens, charges, security interests or encumbrances upon real property or personal property.

1.24. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.25. *Notice of Award*—A written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.26. *Notice to Proceed*—A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.27. *OWNER*—The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28. *Partial Utilization*—Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.29. *PCBs*—Polychlorinated biphenyls.

1.30. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene and oil mixed with other non-Hazardous Wastes and crude oils.

1.31. *Project*—The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.32 a. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of

1954 (42 USC Section 2011 et seq.) as amended from time to time.

1.32 b. *Regular Working Hours*—Regular working hours are defined as 7:00am to 6:00pm unless otherwise specified in the General Requirements.

1.33. *Resident Project Representative*—The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

1.34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.35. *Shop Drawings*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

1.36. *Specifications*—Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.37. *Subcontractor*—An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.38. *Substantial Completion*—The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER'S definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended, or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER'S written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.39. *Supplementary Conditions*—The part of the Contract Documents which amends or supplements these General Conditions.

1.40. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.41. *Underground Facilities*—All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or



materials, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.42. *Unit Price Work*—Work to be paid for on the basis of unit prices.

1.43. *Work*—The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44. *Work Change Directive*—A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.45. *Written Amendment*—A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2—PRELIMINARY MATTERS

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

2.2. OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

2.3. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or,

if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. ~~In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.~~

Starting the Work:

2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.6.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.2.1. In no case will a schedule be acceptable which allows less than 21 calendar days for each review by Engineer.

2.6.3. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7. Before any Work at the site is started, CONTRACTOR ~~and OWNER~~ shall each deliver to the other OWNER, with copies to each additional insured identified in the Supplementary Conditions ENGINEER,



certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request requested by OWNER) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

2.8 Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

2.9 Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment before any work at the site begins, a conference attended by CONTRACTOR, ENGINEER and others as appropriate designated by OWNER, will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6 and Division 1 - General Requirements. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3-CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary, what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 It is the intent of the Contract Documents to

describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4

3.3. Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

3.3.1 Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.3.2 If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

3.3.3.1 the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or



3.3.3.2 the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation)

3.3.4. In the event of conflicting or ambiguous provisions within the Contract Documents, specifications will take precedence over the drawings and addenda will take precedence over both. Notwithstanding the foregoing, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive. On all drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at the CONTRACTOR'S own risk.

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER'S Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

3.5 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1 a formal Written Amendment
- 3.5.2 a Change Order (pursuant to paragraph 10.4), or

3.5.3 a Work Change Directive (pursuant to paragraph 10.1).

3.6 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.6.1 A Field Order (pursuant to paragraph 9.5).
- 3.6.2 ENGINEER'S approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.6.3 ENGINEER'S written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.7 CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER'S Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

ARTICLE 4-AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands:

4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. ~~Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations.~~ OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER'S furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.



CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Subsurface and Physical Conditions:

4.2.1. *Reports and Drawings:* Reference is made to the Supplementary Conditions for identification of:

4.2.1.1 *Subsurface Conditions:* Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents, and

4.2.1.2 *Physical Conditions:* Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.

4.2.2. *Limited Reliance by CONTRACTOR Authorized Technical Data:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3. *Notice of Differing Subsurface or Physical Conditions:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or

4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

4.2.3.3. differs materially from that shown or

indicated in the Contract Documents, or

4.2.3.4. 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 immediately after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4. *ENGINEER's Review:* ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5. *Possible Contract Documents Change:* If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6. *Possible Price and Times Adjustments:* An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:

4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;

4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and

4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if:

4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the



submission of a bid or becoming bound under a negotiated contract, or

4.2.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment, or

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not 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.

4.3. *Physical Conditions--Underground Facilities:*

4.3.1. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data, and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly immediately after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such Underground Facility and

give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall ~~may~~ be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

Reference Points:

4.4. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. *Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:*

4.5.1. OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractors, Suppliers or anyone else for whom CONTRACTOR is responsible.



4.5.2. ~~CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.2.3), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.~~

4.5.3. ~~If after receipt of such special written notice CONTRACTOR does not agree to resume such work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.~~

4.5.4. ~~To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.~~

4.5.5. ~~The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.~~

ARTICLE 5- BONDS AND INSURANCE

Performance, Payment and Other Bonds:

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

**CONTRACTOR's Liability Insurance:**

5.4 CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

5.4.1. claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.4.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.4.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.4.4. ~~claims for damages insured by customary personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;~~

5.4.5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

5.4.6. 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.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive and 5.4.9, include as additional insureds (subject to any customary exclusion in respect of professional liability), OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds.

5.4.8. include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

5.4.9. include completed operations insurance;

5.4.10. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33;

5.4.11. contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

5.4.13. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

OWNER's Liability Insurance:

5.5. In addition to insurance required to be provided by CONTRACTOR under paragraph 5.4, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6. ~~Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~

5.6.1. ~~include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;~~

5.6.2. ~~be written on a Builder's Risk "all risk" or open-peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended~~



coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;

5.6.3—include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

5.6.4—cover materials and equipment stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

5.6.5—be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER, with thirty days' written notice to each other additional insured to whom a certificate of insurance has been issued.

5.7—OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8—All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.

5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10—If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to

commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.11. Waiver of Rights:

5.11.1—OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2—In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them, for:

5.11.2.1—loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by OWNER; and

5.11.2.2—loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after Substantial Completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of



~~recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER'S Consultants and the officers, directors, employees and agents of any of them.~~

Receipt and Application of Insurance Proceeds:

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance; Option to Replace:

5.14. ~~If either party (OWNER or CONTRACTOR) OWNER has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party CONTRACTOR in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party. OWNER will notify CONTRACTOR in writing within ten fifteen days after receipt/delivery of the certificates (or other evidence requested) to OWNER as required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.~~

Partial Utilization--Property Insurance:

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial

Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6--CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1. CONTRACTOR shall supervise, inspect 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. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER. CONTRACTOR shall submit requests to the ENGINEER no less than 48 hours in advance of any Work to be performed on Saturday, Sunday, Holidays or outside the Regular Working Hours.



6.4 Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.4.1. Purchasing Restrictions: CONTRACTOR must comply with the City's purchasing restrictions. A copy of the resolutions are available for review in the offices of the Purchasing and Risk Management Division or the City Clerk's office.

6.4.2. Cement Restrictions: City of Fort Collins Resolution 91-121 requires that suppliers and producers of cement or products containing cement to certify that the cement was not made in cement kilns that burn hazardous waste as a fuel.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

6.6 CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

6.6.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7. Substitutes and "Or-Equal" Items:

6.7.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description

contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by ENGINEER under the following circumstances:

6.7.1.1 "Or-Equal": If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2. *Substitute Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected



by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3. *CONTRACTOR's Expense:* All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.

6.7.2. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.

6.8. Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

CONTRACTOR shall perform not less than 20 percent of the Work with its own forces (that is, without subcontracting). The 20 percent requirement shall be understood to refer to the Work the value of which totals not less than 20 percent of the Contract Price.

6.8.2. ~~If the Supplementary Conditions Bidding Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed will constitute a condition of the Contract requiring the use of the named subcontractors, suppliers or other persons or organization on the Work unless prior written approval is obtained from OWNER and ENGINEER. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.~~

6.9.

6.9.1. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations. OWNER or ENGINEER may furnish to any subcontractor, supplier or other person or organization evidence of amounts paid to CONTRACTOR in accordance with CONTRACTOR'S "Applications for Payment".



6.9.2 CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

6.10 The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11 All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. ~~Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraphs 5.6 or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER'S Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.~~

Patent Fees and Royalties:

6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of 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. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER'S Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

6.13 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

6.14 Laws and Regulations:

6.14.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2 If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

6.15 CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.15.1 OWNER is exempt from Colorado State and local sales and use taxes on materials to be permanently incorporated into the project. Said taxes shall not be included in the Contract Price.

CONTRACTOR must apply for, and receive, a Certificate of Exemption from the Colorado Department of Revenue for construction materials to be physically incorporated into the project. This Certification of Exemption provides that the CONTRACTOR shall neither pay nor include in his Bid, Sales and Use Taxes on those building and construction materials physically incorporated into the project.

Address:
Colorado Department of Revenue
State Capital Annex



1375 Sherman Street
Denver, Colorado, 80261

Sales and Use Taxes for the State of Colorado, Regional Transportation District (RTD) and certain Colorado counties are collected by the State of Colorado and are included in the Certification of Exemption.

All applicable Sales and Use Taxes (including State collected taxes), on any items other than construction and building materials physically incorporated into the project are to be paid by CONTRACTOR and are to be included in appropriate bid items.

Use of Premises:

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

EJCDC GENERAL CONDITIONS 1910-8 (1990 Edition)
w/ CITY OF FORT COLLINS MODIFICATIONS (REV 4/2000)

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, and prior to release of final payment, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all persons on the Work site or who may be affected by the Work;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss, and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraphs 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a



notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21. Safety Representative:

CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

6.22. CONTRACTOR shall be responsible for coordinating any exchange of material 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.

Emergencies:

6.23. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited

purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

6.25.1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,

6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.3. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

6.25.2. Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

6.25.3. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal, and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of



construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required 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.

6.27 ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawing and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's General Warranty and Guarantee:

6.30.1 CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.30.1.2. normal wear and tear under normal usage

6.30.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in

accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

6.30.2.1. observations by ENGINEER;

6.30.2.2. recommendation of any progress or final payment by ENGINEER;

6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by OWNER;

6.30.2.5. any acceptance by OWNER or any failure to do so;

6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

6.30.2.7. any inspection, test or approval by others; or

6.30.2.8. any correction of defective Work by OWNER.

Indemnification:

6.31. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (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) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by



any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33. The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

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

ARTICLE 7--OTHER WORK

Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then:

- (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work and
- (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable

provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such authority and responsibility will be itemized; and

7.4.3. the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8--OWNER'S RESPONSIBILITIES

8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing



structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

~~8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.~~

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

8.9. The 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 the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

~~8.10. OWNER's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.~~

~~8.11. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.~~

ARTICLE 9—ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative:

9.1. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress

that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work. 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 the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Project Representative:

9.3. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraphs 9.3 and 9.13 and in the Supplementary Conditions of these General Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions paragraph 9.3 of these General Conditions. If the ENGINEER furnishes a Resident Project Representative (RPR) or other assistants, or if the OWNER designates a Representative or agent, all as provided in paragraph 9.3 of the General Conditions, these Representatives shall have the authority and limitations as provided in paragraph 9.13 of the General Conditions and shall be subject to the following:

9.3.1. The Representative's dealings in matters pertaining to the on-site work will, in general, be with the ENGINEER and CONTRACTOR. But, the Representative will keep the OWNER properly advised about such matters. The Representative's dealings with subcontractors will only be through or with the full knowledge and approval of the CONTRACTOR.

9.3.2. Duties and Responsibilities. Representative will:

9.3.2.1 Schedules - Review the progress



schedule and other schedules prepared by the CONTRACTOR and consult with the ENGINEER concerning acceptability.

9.3.2.2 Conferences and Meeting - Attend meeting with the CONTRACTOR such as preconstruction conferences, progress meetings and other job conferences and prepare and circulate copies of minutes of meetings.

9.3.2.3 Liaison

9.3.2.3.1 Serve as ENGINEER'S liaison with CONTRACTOR, working principally through CONTRACTOR'S superintendent to assist the CONTRACTOR in understanding the Contract Documents.

9.3.2.3.2 Assist in obtaining from OWNER additional details or information, when required, for proper execution of the Work.

9.3.2.3.3 Advise the ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been approved by the ENGINEER.

9.3.2.4 Review of Work, Rejection of Defective Work, Inspections and Tests -

9.3.2.4.1 Conduct on-site observations of the Work in progress to assist the ENGINEER in determining that the Work is proceeding in accordance with the Contract Documents.

9.3.2.4.2 Report to the ENGINEER whenever the Representative believes that the Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspections, tests or approvals required to be made; and advise the ENGINEER when he believes work should be corrected or rejected or should be uncovered for observation or requires special testing, inspection or approval.

9.3.2.4.3 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the ENGINEER.

9.3.2.5 Interpretation of Contract Documents Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarification and interpretation of the Contract Documents as issued by the ENGINEER.

9.3.2.6 Modifications. Consider and evaluate CONTRACTOR'S suggestions for

modification in Drawings or Specifications and report these recommendations to ENGINEER. Accurately transmit to CONTRACTOR decisions issued by the ENGINEER.

9.3.2.7 Records.

9.3.2.7.1 Maintain at the Representative's office orderly files concerning correspondence, reports of job conferences, Shop Drawings and samples, reproductions or original Contract Documents including all Work Directive Changes, Addenda, Change orders, Field Orders, additional drawings issued subsequent to the execution of the Agreement, ENGINEER'S clarifications and interpretations of the Contract Documents, progress reports and other project documents.

9.3.2.7.2 Keep a diary, daily report form, or log book, recording hours on the job site, weather conditions, data relative to questions of work directive changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures, send copies to the ENGINEER.

9.3.2.7.3 Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of equipment and materials.

9.3.2.8 Reports

9.3.2.8.1 Furnish ENGINEER periodic reports, as required, of the progress of the Work and of the CONTRACTOR'S compliance with the progress schedule and schedule of shop Drawing and sample submittals.

9.3.2.8.2 Consult with ENGINEER in advance of scheduling major tests, inspections or start of important phases of the Work.

9.3.2.8.3 Draft proposed Change Orders and Work Directive Changes, obtaining backup material from the CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes and field orders.

9.3.2.8.4 Report immediately to ENGINEER and OWNER the occurrence of any accident.

9.3.2.9 Payment Requests. Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendation to



ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the Work.

9.3.2.10 Completion

9.3.2.10.1 Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring correction or completion.

9.3.2.10.2 Conduct final inspection in the company of the ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be corrected or completed.

9.3.2.10.3 Observe that all items on the final list have been corrected or completed and make recommendations to ENGINEER concerning acceptance.

9.3.3 Limitation of Authority. The Representative shall not:

9.3.3.1. Authorize any deviations from the Contract Documents or accept any substitute materials or equipment, unless authorized by the ENGINEER.

9.3.3.2. Exceed limitations of ENGINEER'S authority as set forth in the Contract Documents.

9.3.3.3 Undertake any of the responsibilities of the CONTRACTOR, Subcontractors, or CONTRACTOR'S superintendent.

9.3.3.4 Advise on, or issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures for construction unless such is specifically called for in the Contract Documents.

9.3.3.5 Advise on or issue directions regarding or assume control over safety precautions and programs in connections with the Work.

9.3.3.6 Accept Shop Drawings or sample submittals from anyone other than the CONTRACTOR.

9.3.3.7 Authorize OWNER to occupy the Work in whole or in part.

9.3.3.8 Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the ENGINEER.

Clarifications and Interpretations:

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the

requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application



for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement", entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

9.11 ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement", entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such

decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

9.13.1 Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

9.13.2 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 the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.13.3 ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.13.4 ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.13.5 The limitations upon authority and



responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

ARTICLE 10—CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6, except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11.

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations; but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5. If notice 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) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10.6. By the execution of a Change Order, a Work Change Directive or Written Agreement, OWNER and CONTRACTOR expressly acknowledge and agree that said Change Order, Work Change Directive or Written Agreement provides for a fair and equitable adjustment in the Contract Price and/or Contract Times for the additions, deletions or revisions in the Work as authorized by said Change Order, Work Change Directive or Written Agreement. OWNER and CONTRACTOR further expressly acknowledge and agree that claims for adjustments to the Contract Price and/or Contract Times covered by a Change Order, Work Change Directive or Written Agreement are not valid.

ARTICLE 11—CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of



paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed payment basis, including lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER,

CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof—all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the



performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4—all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

11.5.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.5.4 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6 The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee; or

11.6.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3 where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor; to be negotiated in good faith with the OWNER but not to exceed five percent of the amount paid to the next lower tier Subcontractor.

11.6.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.5 the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

11.6.2.6 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7 Whenever the cost of any Work is to be



determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

11.8.1 the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2 CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9. Unit Price Work:

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

11.9.2 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3 OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1 the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement,

and

11.9.3.2 there is no corresponding adjustment with respect to any other item of Work; and

11.9.3.3 if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

11.9.3.4 CONTRACTOR acknowledges that the OWNER has the right to add or delete items in the Bid or change quantities at OWNER'S sole discretion without affecting the Contract Price of any remaining item so long as the deletion or addition does not exceed twenty-five percent of the original total Contract Price.

ARTICLE 12—CHANGE OF CONTRACT TIMES

12.1 The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows additional time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3 Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and



within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of the CONTRACTOR, or (ii) delays beyond the control of both parties including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

ARTICLE 13-TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.1. Notice of Defects:

Prompt notice of all *defective* Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All *defective* Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

13.2. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

Tests and Inspections:

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.4. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9

below shall be paid as provided in said paragraph 13.9; and

13.4.3. as otherwise specifically provided in the Contract Documents.

13.5. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.6. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing, and of satisfactory replacement or reconstruction, (including but not limited to all costs of repair or replacement of work of others), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such



uncovering, exposure, observation, inspection, testing, replacement and reconstruction, and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

OWNER May Stop the Work:

13.10. If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12. Correction Period:

13.12.1 If within one-year two years after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

13.12.2 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.12.3 Where *defective* Work (and damage to other

Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one-year two years after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and



damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14—PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

14.2. At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Any funds that are withheld by the OWNER shall not be subject to substitution by the CONTRACTOR with securities or any arrangements involving an escrow or custodianship. By executing the application for payment form the CONTRACTOR expressly waives his right to the benefits of Colorado Revised Statutes, Section 24-91-101, et seq.

CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a

recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

14.5.1 the Work has progressed to the point indicated.

14.5.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

14.5.3 the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled insofar as it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to



OWNER referred to in paragraph 14.5 ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the Work is *defective*, or completed Work has been damaged requiring correction or replacement.

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order.

14.7.3. OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

14.7.5. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work.

14.7.6. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens.

14.7.7. there are other items entitling OWNER to a set-off against the amount recommended, or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER

considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work, which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work.



CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing 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 or remedy such deficiencies.

Final Application for Payment:

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails

to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien. Releases or waivers of liens and the consent of the surety to finalize payment are to be submitted on forms conforming to the format of the OWNER'S standard forms bound in the Project manual.

Final Payment and Acceptance:

14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR subject to paragraph 17.6.2 of these General Conditions.

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

14.15. The making and acceptance of final payment will constitute:

14.15.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after



final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2. A waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15-SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

15.1 At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER May Terminate:

15.2 Upon the occurrence of any one or more of the following events:

15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.3. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), 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 finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3 Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4 Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.4.2. for 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;

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4. for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

CONTRACTOR May Stop Work or Terminate:

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority; or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any



sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16-DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement", to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11 and 9.12, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17-MISCELLANEOUS

Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm, or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.2. Computation of Time:

17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose **Cumulative Remedies:**

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

17.5. Whenever reference is made to "claims, costs, losses and damages", it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

17.6. The laws of the State of Colorado apply to this Agreement. Reference to two pertinent Colorado statutes are as follows:

17.6.1. Colorado Revised Statutes (CRS 8-17-101) require that Colorado labor be employed to perform the Work to the extent of not less than 80 percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the project. Colorado labor means any person who is a bona fide resident of the State of Colorado at the time of employment, without discrimination as to race, color, creed, age, religion or sex.

17.6.2. If a claim is filed, OWNER is required by law (CRS 38-26-107) to withhold from all payments to CONTRACTOR sufficient funds to insure the payment of all claims for labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by CONTRACTOR or his



subcontractors in or about the performance of the Work. Such funds must be withheld until said claims have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with OWNER a receipt in full or an order for withdrawal in writing and signed by the person filing such a claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement, as published in a public newspaper in accordance with the law, unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the OWNER. At the expiration of such ninety (90) day period, OWNER shall pay to CONTRACTOR such moneys and funds as are not the subject of suit and lis pendens notices, and shall retain only sufficient funds to insure the payment of judgments which may result from the suit.



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EXCISE GENERAL CONDITIONS 1910-8 (1999 Edition)
w/ CITY OF FORT COLLINS MODIFICATIONS (REV 4/2000)

35



EXHIBIT GC-A to General Conditions of the Construction Contract Between OWNER and CONTRACTOR

DISPUTE RESOLUTION AGREEMENT

OWNER and CONTRACTOR hereby agree that Article 16 of the General Conditions of the Construction Contract between OWNER and CONTRACTOR is amended to include the following agreement of the parties:

16.1. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.15) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of the Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with paragraph 9.11 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.11, and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

EJCDC GENERAL CONDITIONS 1910-8 (1990 Edition)
w/ CITY OF FORT COLLINS MODIFICATIONS (REV 9/99)

16.4. Except as provided in paragraph 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

16.4.3. the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph, but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4, if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.11 a specific provision whereby the Subcontractor consents to being joined in an arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER or ENGINEER's Consultants that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by the American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

GC-A1



IL/CDC GENERAL CONDITIONS 1910-8 (1990 Edition)
w/ CITY OF FORT COLLINS MODIFICATIONS (REV 9/94)

(GC/A)



SECTION 00800 SUPPLEMENTARY CONDITIONS

Conditions of the Contract

These Supplementary Conditions amend or supplement the General Conditions of the Construction Contract (EJCDC General Conditions 1910-8, 1990 edition, with City of Fort Collins Modifications, Rev. 9/94) and other provisions of the Contract Documents as indicated below.

SC-1 DEFINITIONS

SC-1.38. Add the following language to the conclusion of paragraph 1.38 of the General Conditions:

1.38. Substantial Completion. Substantial Completion is further defined as that degree of completion of the operating facilities or systems of the Project defined in the Work Order sufficient to provide the OWNER the full time, uninterrupted, continuous, beneficial operation of the modifications, and all inspections required have been completed and identified conditions corrected.

SC-1.43.A. Add the following new paragraph immediately after paragraph 1.43 of the General Conditions:

1.43.A. Work Order--A written document executed by OWNER and CONTRACTOR that provides for the construction of a portion of the Work, pursuant to the Agreement and all as required by the Contract Documents, and that becomes a Contract Document when executed.

SC-2 PRELIMINARY MATTERS

SC-2.8. Delete paragraph 2.8 of the General Conditions entirely and replace it with the following paragraph:

2.8. Preconstruction Conference. Within ten days after the Contract Times for a Work Order start to run, but before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working relationship among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

SC-2.10. Add the following new paragraph immediately after paragraph 2.9 of the General Conditions:

2.10. Work Order Required for All Work. References to the Agreement in this Article 2 and in the General and Supplementary Conditions and Contract Documents notwithstanding, no Work shall be initiated or performed until CONTRACTOR has received a signed and executed Work Order, incorporating the Notice to Proceed,



from OWNER; and no provision of this Article 2 or of the General and Supplementary Conditions and Contract Documents shall permit or require any action of CONTRACTOR in the absence of a signed and executed Work Order. All provisions of this Article 2 and of the General and Supplementary Conditions and Contract Documents referencing the Agreement or other parts of the Contract Documents, or permitting or requiring any action of CONTRACTOR, shall be read as referencing and, as appropriate, requiring a signed and executed Work Order.

SC-4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

SC-4.2.1.2. Add the following new paragraph immediately following paragraph 4.2.1.2 of the General Conditions:

4.2.1.2.1. No drawing of physical conditions in or relating to existing surface or subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site have been utilized by the Engineer in preparation of the Contract Documents, except the following:

SC-5 BONDS AND INSURANCE

SC-5.4.7. Include the following parties or entities as additional insureds, as provided in paragraph 5.4.7 of the General Conditions:

5.4.7.1. City of Fort Collins, Colorado, 4316 LaPorte Avenue, Fort Collins, Colorado 80522

5.4.7.2. _____

SC-5.4.8.1. Add the following new paragraph immediately following paragraph 5.4.8 of the General Conditions:

9.4.8.1. *Limits of Liability.* The limits of liability for the insurance required by the paragraph numbers of the General Conditions listed below are as follows:

For Paragraphs 5.02.A.1 and 5.02.A.2: Coverage A - Statutory Limits; Coverage B - \$100,000 / \$100,000 / \$500,000.

For Paragraphs 5.02.A.3 and 5.02.A.5: The Commercial General Liability policy will have limits of \$1,000,000 combined single limits (CSL). This policy will include coverage for Explosion, Collapse, and Underground coverage unless waived by the Owner.

For Paragraph 5.02.A.6: The Comprehensive Automobile Liability Insurance policy will have limits of \$1,000,000 combined single limits (CSL).

For Paragraph 5.02.B.3: This policy will include completed operations coverage / product liability coverage with limits of \$1,000,000 combined single limits (CSL). This policy shall also include an Umbrella Excess Liability as follows: General liability



and automobile liability insurance in an amount not less than \$1,000,000 per occurrence in excess of the above stated primary limits.

SC-6 CONTRACTOR'S RESPONSIBILITIES

SC-6.14.3. Add the following new paragraph immediately after paragraph 6.14.2 of the General Conditions:

6.14.3. The following Laws or Regulations are included in the Contract Documents as mandated by statute or for the convenience of the CONTRACTOR. Other Laws and Regulations apply which are not included herein, and are within the CONTRACTOR's duty and responsibility for compliance thereto:

6.14.3.1. Notice to owners of Underground Facilities is required prior to excavations in the vicinity of such facilities.

6.14.3.2. Unless otherwise decided by reason of the amount of the Contract Price involved, or other good reason, before or at the time that the contract is awarded to a corporation outside the State of Colorado, such corporation must carry out the proper procedure to become authorized to do business in the State of Colorado, designate a place of business therein, and appoint an agent for service of process.

Such corporation must furnish the OWNER with a certificate from the Secretary of State of Colorado has been issued by its office and there shall also be procured from the Colorado Secretary of State of photostatic or certified copy of the designated of place of business and appointment of agent for service of process, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process have been made.

6.14.3.3. The CONTRACTOR must conform to the rules and regulations of the Industrial Commission of Colorado. Particular reference is made to rules and regulations governing excavation Work adopted by the Industrial Commission of Colorado.

SC-11 CHANGE OF CONTRACT PRICE

SC-11.6.2.7. Add the following new paragraph to paragraph 11.6.2 of the General Conditions:

11.6.2.7. *Cost of the Work.* Allowances for profit, overhead and mark-up prescribed by Article 4 of the Agreement shall be used in lieu of any CONTRACTOR'S fee, overhead, profit or mark-up allowances as prescribed in paragraphs 11.6.2.1, 11.6.2.2, and 11.6.2.3.

SC-12 CHANGE OF CONTRACT TIMES

SC-12.3. Add the following language to the end of paragraph 12.3 of the General Conditions:

12.3. Lost days due to abnormal weather conditions will be allocated as required.



SC-14 PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.1. Add the following language to the end of paragraph 14.1 of the General Conditions:

14.1. *Schedule of Values.* Progress payments on the fixed fee shall be in proportion to the cumulative actual Cost of the Work as a percentage of the Allowable Cost of the Work. An amount not to exceed fifteen (15%) percent of the fixed fee shall be advanced to the Contractor for mobilization in the first progress payment.



SECTION 00900

ADDENDA, MODIFICATIONS AND PAYMENT

- | | |
|-------|-------------------------|
| 00950 | Change Order |
| 00960 | Application for Payment |



SECTION 00950 CHANGE ORDER FORM

CHANGE ORDER NO. _____

CONTRACTOR: _____

WORK ORDER TITLE & NO. : _____

ORIGINAL BID/RFP # & TITLE: 9227 CM/GC Services for Lemay Ave Realignment over the
BNSF Railroad Tracks and Vine Dr.

DESCRIPTION:

1. Reason for change: _____
2. Description of Change: _____
3. Change in Contract Cost: _____
4. Change in Contract Time: _____

ORIGINAL CONTRACT COSTS

\$ _____

TOTAL APPROVED CHANGE ORDER(S)

\$ _____

TOTAL PENDING CHANGE ORDER(S)

\$ _____

TOTAL THIS CHANGE ORDER

\$ _____

TOTAL % OF ORIGINAL CONTRACT, THIS CO:

_____ %

TOTAL % OF ORIGINAL CONTRACT, ALL CO'S:

_____ %

ADJUSTED CONTRACT COST**\$ _____****(Assuming all change orders approved)**

ACCEPTED BY: _____
Contractor's Representative

DATE: _____

ACCEPTED BY: _____
Project Manager

DATE: _____

REVIEWED BY: _____
Title:

DATE: _____

APPROVED BY: _____
Title:

DATE: _____

APPROVED BY: _____
(Purchasing Agent if > \$60,000)

DATE: _____

cc: City Clerk Architect/Engineer
 Finance Purchasing
 Project Manager Contractor



GP

**SECTION 00960
PAYMENT APPLICATION**



APPLICATION FOR PAYMENT PROJECT:			PAGE 1 OF 4 APPLICATION NUMBER: APPLICATION DATE: PERIOD BEGINNING: PERIOD ENDING: PROJECT NUMBER:
OWNER: City of Fort Collins ENGINEER:		CONTRACTOR:	

CHANGE ORDERS <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">NUMBER</th> <th style="text-align: left;">DATE</th> <th style="text-align: left;">AMOUNT</th> </tr> <tr> <td>1</td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> </tr> </table>	NUMBER	DATE	AMOUNT	1			2			3			Application is made for Payment as shown below in connection with Contract The present status of the account for this Contract is as follows: Original Contract Amount: Net Change by Change Order: _____ Current contract Amount: \$0.00 Total Completed and Stored to Date: Less Previous Applications: _____ Amount Due this Application - Before Retainage: \$0.00 Less Retainage: _____ Net Change by Change Order \$0.00
NUMBER	DATE	AMOUNT											
1													
2													
3													
AMOUNT DUE THIS APPLICATION: \$0.00													

CERTIFICATION:
 The undersigned CONTRACTOR certifies that all obligations of CONTRACTOR incurred in connection with the Work have been satisfied as required in Paragraph 14.3. of the General Conditions of the Contract.

The above Amount Due This Application is requested by the CONTRACTOR.

Date: _____ By: _____

Payment of the above Amount Due This Application is recommended by the ENGINEER.

Date: _____ By: _____

Payment of the above Amount Due This Application has been reviewed by the OWNER'S Project Manager.

Date: _____ By: _____

Payment of the above Amount Due This Application is approved by the OWNER.

Date: _____ By: _____

PAGE 2 OF 4

[illegible]

CHANGE ORDERS						APPLICATION FOR PAYMENT								PAGE 3 OF 4	
						Work Completed This Month		Work Completed Previous Periods		Work Completed To Date		Stored Materials This		Total Earned To Date	Percent Billed
Bid Item				Unit Price	Amount	Qty.	Amount	Qty.	Amount	Qty.	Amount	Period	Date		
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
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					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
TOTALS CHANGE ORDERS					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	
PROJECT TOTALS					\$0.00		\$0.00		\$0.00		\$0.00			\$0.00	

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EXHIBIT C CHANGE ORDER NO.

PROJECT TITLE:

SERVICE PROVIDER: Company Name

WORK ORDER NUMBER:

PO NUMBER:

DESCRIPTION:

1. Reason for Change: Why is the change required?
2. Description of Change: Provide details of the changes to the Work
3. Change in Work Order Price:
4. Change in Work Order Time:

ORIGINAL WORK ORDER PRICE	\$	.00
TOTAL APPROVED CHANGE ORDER		.00
TOTAL PENDING CHANGE ORDER		.00
TOTAL THIS CHANGE ORDER		.00
TOTAL % OF THIS CHANGE ORDER		%
TOTAL C.O.% OF ORIGINAL WORK ORDER		%
ADJUSTED WORK ORDER COST	\$	.00

 SERVICE PROVIDER: _____
 Name, Title

Date: _____

 ACCEPTANCE: _____
 Name, Project Manager

Date: _____

 REVIEWED: _____
 Name, Buyer or Senior Buyer

Date: _____

 ACCEPTANCE: _____
 Gerry Paul, Purchasing Director
 (if greater than \$60,000)

Date: _____



EXHIBIT D SCOPE OF SERVICES

For additional information applicable to this Scope of Work, see Section 1 of the RFP document, Project Background Information and Status.

The City of Fort Collins is requesting Construction Management/General Contractor (CM/GC) services related to the construction of Realigned Lemay Avenue over the Burlington Northern Santa Fe (BNSF) Railroad Tracks and Vine Drive (the Project)

CM/GC is a contracting method that involves the contractor in the design process. The City anticipates award of separate Work Orders for each phase of the project including Construction Package 01, Preconstruction Support Services; and Future Construction Packages. The intent is to form a partnership with the City of Fort Collins (the Owner), the designer working for the City of Fort Collins (AECOM), and the CM/GC. The focus is on a partnership and a collaborative design development to minimize risk, improve the construction schedule, promote innovation, and deliver a cost-efficient construction project.

1. Preconstruction Support Services

The CM/GC team relies on the expertise of the contractor to deliver a better product in less time and at a cost competitive with traditional design-bid-build construction processes. The CM/GC is required to provide the following expertise during the Preconstruction Support Services Phase of the project:

- a. The skills and knowledge to estimate the quantities of materials, labor, and equipment needed to construct the Project.
- b. The skills and knowledge to determine the tasks (work breakdown structure) needed to complete the Project and estimate the costs, duration, and sequence of these tasks.
- c. An understanding of the availability, cost, and capacities of materials, labor, and equipment.
- d. The skills and knowledge to identify potential risks (including cost risks) and methods to mitigate them during the design process.
- e. The skills and knowledge to determine constructability of various designs and to develop construction phasing and maintenance of traffic schemes for various designs.
- f. The skills, knowledge and experience to address bridge construction and phasing and the ability to evaluate the feasibility of all types of bridge substructure and superstructure construction techniques. The CM/GC should be able to discuss the viability and pros and cons of various types of concrete bridge construction including but not limited to cast-in-place, precast, alternative concrete materials, etc.
- g. The skills, knowledge and experience necessary to coordinate the Project work with anticipated utilities conflicts and relocations.

If the bridge, embankment, walls or other significant portions of the work are to be constructed primarily by a subcontractor, that subcontractor must be willing to be involved with Preconstruction Support Services at the same level as the CM/GC to discuss in detail construction costs, techniques, etc. as detailed above. The



subcontractor must also be willing to adhere to the City's "open book" negotiation policy as described herein.

It is expected that any subcontractor that the City, in its sole discretion, deems to be significant and critical to the overall project delivery be available throughout the Preconstruction Support Services Phase of the Project and adhere to the City's "open book" negotiation policy. The City shall be involved with the procurement of subcontractors to the extent required to determine reasonableness of price and quality of work. It is expected that the CM/GC involves the City in the subcontractor procurement process and works together with the City to procure acceptable contractors in terms of scope, schedule, budget, and quality. Examples of subcontracted work the City would consider to be significant and critical on this project may be:

- Bridge and wall construction – concrete, Rockery construction, MSE wall and fascia, bridge substructure and superstructure, etc.
- Concrete pavement, curb and gutter, sidewalk
- Asphalt placement
- Landscaping
- Traffic control

The CM/GC will be awarded a Preconstruction Support Services Work Order, prepared and administered by the City. The cost of the Work Order will be based upon a final negotiated scope, total hours and unit rate for each key employee for "Preconstruction Support Services". The Preconstruction Support Services Work Order may include any or all the following activities:

- a. **Partnering:** The City expects a strong partnering relationship with the CM/GC contractor. A formal Partnering Session will be held with the selected CM/GC, City of Fort Collins team members, contract Architects and Engineers (the AECOM team), and other key stakeholders soon after the selection process is completed. Successful CM/GC project delivery requires an environment where trust and teamwork prevent disputes, fosters a cooperative bond to everyone's benefit, and facilitates the completion of a successful project. Adversarial relationships between the CM/GC and Owner will not be acceptable on the project and could lead to the termination of the contract.
- b. **Initial Risk Assessment Workshop:** Participate in an initial project introduction and Risk Assessment workshop. The workshop will be conducted in Fort Collins and may include the following tasks:
 - i. Project site walk thru
 - ii. Introduction to the project and the project stakeholders
 - iii. Project status, goals, objectives, funding, etc.
 - iv. Presentation of project elements
 - v. Review phasing options for construction
 - vi. Development of alternative phasing concepts
 - vii. Assessment of primary project risks in terms of cost, quality and schedule
- c. **Design Reviews (collaborative design development):** Participate in formal and informal design reviews. For each review, the CM/GC may be asked to perform any or all of the following tasks:



- i. Provide constructability reviews
- ii. Work with the designer to prepare draft construction phasing and maintenance of traffic schemes
- iii. Develop construction schedules
- iv. Provide construction cost estimates
- v. Perform a risk assessment in terms of cost, quality and schedule
- vi. Provide value engineering to reduce risk, cost and schedule
- vii. Engage and coordinate with stakeholders and property owners.

The CM/GC may be asked to perform any of the above tasks throughout the design phase, and not necessarily during formal design reviews. It is anticipated the CM/GC will be fully engaged throughout the design process and be willing to provide input when requested. The CM/GC shall be compensated for their time spent providing design assistance as identified above, in accordance with the Preconstruction Support Services Work Order. It is likely that the CM/GC will be required to be at bi-weekly or monthly coordination meetings as identified by the City. The CM/GC may be required to engage and coordinate with stakeholders and property owners prior to construction.

2. Construction Work Order Pricing

a. **Construction Package 01**

- i. Construction Package 01 is intended to be constructed according to the submitted unit prices, unless the City and CM/GC are able to identify cost savings measures associated with this work. Major items of work associated with Construction Package 01 that may benefit from CM/GC input (potentially resulting in cost savings) include, but are not limited to:
 1. Rockery Wall construction and associated items – particularly rock source, size, quality, etc. It is not expected that each rock will need to be cut and faced like typical stone boulders produced at quarries. The intent is to save costs and limit the amount of effort spent on shaping the rocks, ideally there would be no need for cutting of rocks.
 2. Embankment construction – material source, quality, and availability
 3. Bridge abutments - MSE wall construction and stone fascia

b. **Future Construction Packages**

When the City, the designer, and the CM/GC agree that the project has been designed to a sufficient level of detail to allow the CM/GC to accurately price construction elements of the project, Construction Contract Price Negotiations will commence.

1. **Price Negotiation Process:** The following procedures will be used for future Construction Contract Price Negotiations, as well as for any modifications to the submitted pricing for Construction Package 01 and associated alternatives.
 - i. The designer will produce a set of the relevant plans and specifications showing the work to be accomplished. The plans will also show all work accomplished under any previous construction packages.



- ii. The CM/GC will prepare a "bid" to perform the work shown. The CM/GC will use the unit prices submitted as part of the Proposal unless a new unit price is justified based off factors discussed with the City throughout the design process and identified in the original project proposal.
- iii. The City will develop a construction cost estimate for the work.
- iv. Upon opening the CM/GC's "bid" the City will determine the acceptability of the "bid" by comparing it to its construction cost estimate.
- v. If the prices are acceptable, the City will prepare a Work Order for construction services. If a previous Work Order for construction services had been entered into, this work may be added to that contract by change order or a new Work Order may be issued.
- vi. If the prices are not acceptable, the City and the CM/GC will conduct a price negotiation meeting to discuss the variances between the CM/GC's "bid" and the City's construction cost estimate.
- vii. Following the price negotiation meeting, the Construction Contract Negotiations will enter into subsequent iterations of the above noted process and both the CM/GC and the City will refine their estimates based on discussions during the price negotiation meetings.
- viii. The City reserves the right to require the CM/GC to enter into "open book" cost model price negotiations at any time through this process, where the CM/GC will be required to reveal and defend its detailed pricing breakdowns including labor, materials, equipment, subcontractor and supplier quotes, mobilization, overhead, mark-up, and profit. See below for the City's "open book" negotiation requirements.
- ix. At any time, if the City determines that an agreement cannot be successfully negotiated, the City reserves the right to terminate construction contract negotiations and the Preconstruction Support Services Work Order and procure the construction of the project by other means. If the City then offers the project up for public bids, the CM/GC will not be eligible to bid on the project.

2. **"Open Book" Negotiations Process:** Negotiations may require any or all of the following information:

The CM/GC shall submit information as requested by the City to the extent necessary to permit the City to determine the reasonableness of the "bid" price. The CM/GC shall provide cost or pricing data, broken down by individual work item, for the CM/GC and each major subcontractor. The CM/GC shall submit material and subcontractor quotes, anticipated labor and equipment usage, and anticipated production rates.

If requested, submit a written proposal for the work identifying the major elements of the work, the quantity of the element, and its contribution to the proposed price. Provide further breakdowns if requested by the City.

Material: Furnish quotes and/or material invoices showing the cost of material to be incorporated in the work.

Labor: Show basic hourly rates, fringe benefits, applicable payroll costs (workers compensation, insurance, etc.) paid subsistence, and travel costs for each labor classification and foreman employed in the work



Equipment: Provide a complete descriptive listing of equipment to be used in the work including make, model and year of manufacture. Support rented or leased equipment costs with invoices

Other direct costs: Furnish documentation of invoices to support any other direct costs to be incurred that are not included above (e.g., bonds, mobilization, permits, etc.)

Production Rates: Provide actual hours of performance, on a daily basis, for each labor classification and for each piece of equipment.

Subcontract Costs: Provide supporting data as required above.

Markup and percentages to be used for developing future unit costs:

Markups and rate sheets shall be used by the CM/GC and City when determining and calculating unit prices. Percentages and unit rates larger than the submitted rates shall not be allowed without an amendment to the Master Agreement.

Overhead: Identify overhead rates and list the types of costs that are included in overhead.

Profit: Include a reasonable profit reflecting the efficiency and economy of the CM/GC and subcontractors in performing the work, the contract risk type, the work difficulty, and management effectiveness.

Markup: List any markup cost for subcontractors or other items. Provide backup information as requested for a breakdown and justification of markup expenses.

3. Construction Requirements

The City expects the CM/GC to provide full construction services related to the completion of the Project for Construction Package 01 and intends to award future construction packages to the CM/GC as well, pending satisfactory performance and pricing. The CM/GC will be required to sign a Work Order for construction services. For the most part, construction services will be contracted and performed in accordance with the City's standard processes for traditional design-bid-build projects. These services are to include, but not be limited to the following:

- Provide construction services according to the Agreement and contract documents including self-performance with a goal of at least 40% of the physical work (including overhead, profit and materials).
- Provide qualified full-time site supervision and management of trade subcontractors to meet or exceed the defined project schedule.
- Provide open procurement of subcontractors and suppliers that are not assigned by the City. Include the City in the procurement process. A minimum of 3 quotes may be required for the subcontractor procurement process. If less than 3 subcontractor quotes are obtained for a given item of work, justification must



be provided to, and agreed upon by, the City. The City may choose to limit the amount of subcontractor quotes at their discretion.

- Provide storm water management and BMP maintenance for the site complying with State and City regulations.
- Provide construction delivery scheduling, meeting attendance and reporting according to contract document and federal or state requirements. This includes progress reporting and subcontractor work participation.
- Provide site security and protection during construction. Provide all site safety management and compliance with OSHA standards and criteria. Implement a site safety program that is reported on regularly.
- Provide for quality control program that meets or exceeds minimum job/contract document and industry standards. Coordinate all quality assurance testing and inspections through the City. Quality control shall be the responsibility of the CM/GC.
- Meet all licensing and permitting requirements as set forth by the City of Fort Collins and the State of Colorado for both CM/GC and subcontracted work.
- Provide work that complies with the Larimer County Urban Area Street Standards (LCUASS), the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, the most recent version of the City of Fort Collins Development Construction Standards for Water, Wastewater and Stormwater, project construction contract and general and special provisions as amended by the contract. This is not an exhaustive list, and more project provisions may be included as design progresses.
- Provide services to manage participation in project close out process and needs during the project warranty period.
- Provide all City and State (as applicable) required documentation prior to and during construction, including but not limited to material submittals and certifications, schedule updates, pre-work plans, etc. and other documentation as required in the final contract documents.
- Comply with all railroad requirements and adhere to all elements of the BNSF Construction and Maintenance Agreement associated with this project. This document is not finalized and will be completed in coordination with the CM/GC.

Construction Package 01 and Bid Alternatives: Construction Package 01 consists of embankment construction, rock walls, removals, clearing and grubbing, utility work and other work as defined in the summary of quantities and plan set provided with the RFP. The City has furthered the design of Construction Package 01 and summary of quantities associated with that work to the point where accurate construction unit pricing has been provided.

With this RFP, the City also included two Bid Alternatives - Embankment Package 01 and Embankment Package 02. Pricing for Embankment Package 01 shall be the same as the unit prices provided for Construction Package 01 as this work is the same and will simply increase the overall quantity of these items. The plans for



Embankment Package 02 are not as developed as Construction Package 01, however, the City requested budgetary pricing associated with this package. Although this pricing will not necessarily be final pricing for Embankment Package 02, it is expected that the provided pricing be as close to final as possible, and as the design finalizes the City will work with the CM/GC to adjust the submitted pricing as necessary; either increasing or decreasing unit prices based on potential design changes or other identified pricing constraints (material pricing, means and methods, dewatering, etc.).

The City intends to award Embankment Package 01 or 02 concurrently or shortly after Construction Package 01, based on feedback provided by the CM/GC as well as budgetary constraints. Embankment Package 02 includes grading and structure work associated with installing a box culvert to be used for a future pedestrian and trail underpass to serve northeast Fort Collins.

The CM/GC team and its subcontractors shall have the capability to construct all aspects associated with the above construction packages. In addition, the CM/GC shall be able to perform other work as identified in the overall project scope.

A landscape alternative was included with the RFP; however, the City has not requested pricing for these elements. This was intended to provide the CM/GC with general information around future landscaping and urban design elements to be included in the final construction of the project.

Additional Construction Packages and Work Orders: Additional construction packages shall be awarded as design items are finalized and final pricing is agreed upon. The CM/GC shall be involved with the final design of the project.

Early construction may be done on future work orders in an effort to coordinate with other entities, including the ditch company, City Traffic Department, local businesses, adjacent development, etc. The City may choose to exercise this action to save construction time, money, or avoid potential delays and rework once the project begins, etc.

Early Procurement of Materials and Other Services: The CM/GC may be asked to procure long lead materials that may be in short supply, require longer than desired lead times from purchase to delivery, or items that may have a significant cost savings or quality benefit. City may also procure through the CM/GC Other Services such as pavement cores, pipe videos, potholes, or other investigations to facilitate the design or future construction packages. The City may choose to exercise this option if the Early Procurement or Other Services saves significant construction time, money, traffic impacts, avoids potential delays once the project begins, etc. The procedures as previously described will be used to negotiate early materials procurements along with the associated Sections of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction. The City may ask to procure these items at any reasonable time throughout the design and construction phase of the project.

Schedule and Substantial Completion of Construction Packages: The CM/GC and the City shall mutually agree upon the substantial completion date for the Work Order associated with Construction Package 01.



Future Work Orders shall have the ability to modify the substantial completion date set with Construction Package 01 to accommodate additional work. As work is added, the substantial completion date shall be modified accordingly.

4. CM/GC Process and Fees – Future Construction Packages

The City intends to negotiate a unit price work order, or work orders, that shall cover the entire scope of construction services with the CM/GC and may require the City's "Open Book Negotiation Process" as detailed above. The CM/GC will also be required to provide input on estimated quantities for each Major Line Item by performing an independent takeoff and analysis of the proposed work. Both the City and the CM/GC will come to a mutually agreed upon quantity. The Major Line Items will be determined by the City with input from the CM/GC.

Once the final quantities are agreed to, a quantity allowance for each item will be negotiated (typically less than five percent). The final quantities plus allowance for each item will encompass the total contract amount for each item. This will be the Guaranteed Maximum Quantity for each item, which will set the Guaranteed Maximum Price. The CM/GC shall be fully responsible for any costs associated to complete the work above the negotiated Maximum Quantity, unless there is an agreed upon change in scope for any item that overruns the Maximum Quantity.

The CM/GC shall include industry standard overhead, profit and markup rates as applicable to each task and item. Maximum overhead, profit and markup rates for any line item are set in the Compensation section herein. The CM/GC shall utilize the unit pricing provided with their proposal for Embankment Package 01 and Embankment Package 02 unless other rates are negotiated through further design. The intent of this pricing is for the CMGC to assume minimal risk, and as risks are identified through further design, the project team works together to identify, minimize, eliminate, and/or mitigate potential risk items. As design, scope and risk changes throughout final design, the City is aware this may have an impact on the submitted pricing and overall cost. The City and CM/GC shall renegotiate pricing as required throughout the preconstruction phase.

5. Services Agreement and Construction Contract

Following successful completion of the Preconstruction Support Services, the CM/GC will enter into a Work Order for construction services. For the most part, construction services will be performed in accordance with the City's standard processes for traditional design-bid-build projects. The Engineers Joint Contract Document Committee (EJCDC) contract documents will be used on this Project. These special provisions will be modified and expanded as design progresses and will be included as part of the construction Work Orders.

Laws and Regulations

The CM/GC agrees to comply fully with all applicable local, State of Colorado and Federal laws and regulations and municipal ordinances.

Fees, Licenses, Permits



The CM/GC shall be responsible for obtaining any necessary licenses, fees or permits without additional expense to the City. All equipment shall be properly licensed and insured, carry the appropriate permits and be placarded as required by law.

Hours

Working hours are from 7:00 am to 8:00 pm Monday through Friday and does not include recognized holidays. City Project Manager may agree, in writing, to hours work outside of this time frame including weekend and night work.

Subcontractors

The City will contract solely with the CM/GC; therefore, subcontractors will be the responsibility of the CM/GC to manage, schedule, pay, communicate and provide site supervision and direction.

Standard of Conduct

The CM/GC shall be responsible for maintaining satisfactory standards of employees' and subcontractor's competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any individual, as may be necessary.

The personal conduct of the CM/GC and its staff has a direct impact on the quality of performance. Unacceptable personal conduct/behavior, as defined herein, may result in immediate or early termination of the Agreement.

The City may request, at their sole discretion, the CM/GC to immediately remove from this assignment any employee and/or subcontractor found unfit to perform duties due to one or more of the following reasons: (1) Neglect of duty. (2) Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting. (3) Theft, vandalism, immoral conduct or any other criminal action. (4) Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or substances while on assignment for the City.

All City-owned or operated facilities and their grounds are non-smoking sites. All City parks, trails and natural areas are also non-smoking.

Invoicing and Payment

Invoices should be emailed monthly to invoices@fcgov.com with a copy to the Project Manager. The cost of the work completed shall be paid to the CM/GC each month following the submittal of a correct invoice by the CM/GC indicating the project name, Purchase Order number, task description, hours worked, personnel/work type category, hourly rate for each employee/work type category, date of the work performed specific to the task, percentage of that work that has been completed by task, 3rd party supporting documentation with the same detail and a brief progress report.

Payments will be made using the prices listed on the agreed-to Price Schedule. In the event a service is requested which is not listed on the Price Schedule, the CM/GC and the City will negotiate an appropriate unit price for the service prior to the CM/GC initiating such work. The City is exempt from all state taxation including state sales and use taxes.



The City pays invoices on Net 30 terms.

COVID-19 Compliance

The CM/GC and its subcontractors shall comply with all state, county, and local laws, ordinances, and public health orders established to reduce the spread of COVID-19, as applicable. The CM/GC shall ensure employees and subcontractors with COVID-19 symptoms do not report to the job site. The CM/GC must organize work to ensure individuals minimize contact and maximize social distancing. Individuals must wear all standard worksite personal protective equipment (PPE). In addition, individuals should wear a mask or cloth face covering consistent with local public health recommendations and other applicable safety requirements.



EXHIBIT E COMPENSATION

ATTACHMENT #9 Preconstruction Support Services Unit Rates			
ITEM NUMBER	ITEM	UNIT	UNIT COST
1	Project Manager	Hour	\$148.00
2	Project Superintendent	Hour	\$148.00
3	Bridge/structure Superintendent	Hour	\$114.00
4	Earthwork/dirt Superintendent	Hour	\$114.00
5	Traffic Control Specialist	Hour	\$103.00
6	Wall Construction Expert	Hour	\$81.40
7	Cost Estimator	Hour	\$115.00
8	Safety Representative	Hour	\$88.00
9	Preconstruction Manager	Hour	\$167.00
10	Project Scheduler	Hour	\$129.00
11	Project Engineer	Hour	\$99.00

* The CM/GC may provide or omit rates and key employees as they deem necessary. The intent is to have enough key employees with the right expertise to help in project development

** Final number of hours for each key employee will be determined with input from the CM/GC and the City

Note: The unit rates provided include Overhead and Profit



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ATTACHMENT #10 - Markup Schedule for Unit Price Development	
Markup Item:	Percent Markup:
Equipment Markup	See Clarifications Below
Material Markup	See Clarifications Below
Labor Markup	See Clarifications Below
Subcontractor Markup	See Clarifications Below
Overhead Markup	5
Profit Markup	3
Other:	
Other:	
Other:	

* CM/GC to provide markup rates as applicable to their company

** Markup rates provided are to be used for future unit price development. Future work packages shall be negotiated unit price work orders in accordance with the process outlined in the RFP

Clarifications:

- 1 Markup for Equipment, Material, Labor and Subcontractors are included in the Profit and Overhead Markup items
- 2 The Profit Markup percentage is applied to the total cost of the project (the sum of direct and indirect costs)
- 3 Overhead Markup is home office overhead, applied to the total cost of the project (the sum of direct and indirect costs)



**FOR REFERENCE. UNIT PRICES TO BE USED FOR CONSTRUCTION WORK ORDERS
UNLESS OTHERWISE MUTUALLY AGREED**

Addendum 2 - ATTACHMENT #11					
Construction Package 01 Cost Proposal					
PAY ITEM NO.	CONTRACT PAY ITEM	UNIT	QUANTITY	UNIT COST	TOTAL COST
202-00250	REMOVAL OF PAVEMENT MARKING	SF	3,760	\$ 2.16	\$ 8,121.60
203-00060	EMBANKMENT MATERIAL (COMPLETE IN PLACE)	CY	186,877	\$ 16.55	\$ 3,092,614.35
203-00600	STRIPPING	CY	31,159	\$ 9.75	\$ 303,800.25
206-00100	STRUCTURE BACKFILL (CLASS 1)	CY	8,908	\$ 61.30	\$ 546,060.40
206-00380	MECHANICAL REINFORCEMENT OF SOIL	CY	8,932	\$ 11.20	\$ 77,638.40
207-00205	TOPSOIL (PLACED FROM ITEM 203-00600 STRIPPING)	CY	11,091	\$ 5.30	\$ 58,782.30
420-00000	GEOMEMBRANE	SY	2,028	\$ 14.90	\$ 30,217.20
420-00112	GEOTEXTILE (DRAINAGE) (CLASS 1)	SY	5	\$ 214.00	\$ 1,070.00
420-00132	GEOTEXTILE (SEPARATOR) (CLASS 1)	SY	278	\$ 6.00	\$ 1,668.00
502-11274	STEEL PILING (HP 12x74)	LF	1,665	\$ 157.00	\$ 261,405.00
504-03411	RETAINING WALL (BOULDER)	SY	1,469	\$ 667.00	\$ 979,823.00
601-03050	CONCRETE CLASS D (WALL)	CY	102	\$ 877.00	\$ 89,054.00
601-08405	CONTACT GROUTING	CY	210	\$ 646.00	\$ 135,660.00
601-30000	CUT STONE VENEER	SY	1,260	\$ 930.00	\$ 1,171,800.00
602-00000	REINFORCING STEEL	LB	10,213	\$ 1.26	\$ 12,868.38
603-01180	18 INCH REINFORCED CONCRETE PIPE	LF	83	\$ 84.00	\$ 6,972.00
603-01240	24 INCH REINFORCED CONCRETE PIPE	LF	484	\$ 106.00	\$ 49,184.00
603-01300	30 INCH REINFORCED CONCRETE PIPE	LF	125	\$ 131.00	\$ 16,375.00
603-01360	36 INCH REINFORCED CONCRETE PIPE	LF	140	\$ 156.00	\$ 21,840.00
603-01480	48 INCH REINFORCED CONCRETE PIPE	LF	1,316	\$ 254.50	\$ 334,922.00
603-05024	24 INCH REINFORCED CONCRETE END SECTION	EA	2	\$ 1,290.00	\$ 2,580.00
604-19205	INLET 10' TYPE R (5 FOOT)	EA	6	\$ 8,300.00	\$ 49,800.00
604-31000	MANHOLE BOX BASE (SPECIAL)	EA	1	\$ 17,540.00	\$ 17,540.00
604-31005	MANHOLE BOX BASE (5 FOOT)	EA	1	\$ 8,620.00	\$ 8,620.00
604-31010	MANHOLE BOX BASE (10 FOOT)	EA	5	\$ 11,420.00	\$ 57,100.00
605-00030	EMBANKMENT PROTECTOR TYPE 3	EA	4	\$ 6,110.00	\$ 24,440.00
619	2" TAP ON EXISTING WATER MAIN	EA	2	\$ 6,740.00	\$ 13,480.00
619	WATER METER/YOKE/BACKFLOW PREVENTER INSTALLATION	EA	2	\$ 12,000.00	\$ 24,000.00
625-00000	CONSTRUCTION SURVEYING	LS	1	\$ 154,650.00	\$ 154,650.00
630-00007	TRAFFIC CONTROL INSPECTION	DAY	120	\$ 135.00	\$ 16,200.00
630-00012	TRAFFIC CONTROL MANAGEMENT	DAY	30	\$ 643.00	\$ 19,290.00
630	CONSTRUCTION TRAFFIC CONTROL (DEVICES ONLY)	LS	1	\$ 8,836.00	\$ 8,836.00
630	FLAGGER	HR	1,000	\$ 30.25	\$ 30,250.00
630-60372	BARRIER (TEMPORARY)	LF	770	\$ 25.75	\$ 19,827.50
630-65010	IMPACT ATTENUATOR (TEMPORARY)	EA	2	\$ 6,520.00	\$ 13,040.00
706-70380	EROSION CONTROL	LS	1	\$ 59,198.00	\$ 59,198.00
700	MOBILIZATION	LS	1	\$ 1,430,500.00	\$ 1,430,500.00
Construction Package 01 Total Cost					\$ 9,125,427.38

Note: Prices include Overhead and Profit



FOR REFERENCE, UNIT PRICES TO BE USED FOR CONSTRUCTION WORK ORDERS
UNLESS OTHERWISE MUTUALLY AGREED.

ATTACHMENT 12 Embankment Package 01 Cost Proposal					
PAY ITEM NO.	CONTRACT PAY ITEM	UNIT	QUANTITY	UNIT COST	TOTAL COST
203-00060	EMBANKMENT MATERIAL (CIP)	CY	3,509	\$ 17.85	\$ 62,635.65
203-00600	STRIPPING	CY	5,938	\$ 10.80	\$ 64,130.40
207-00205	TOPSOIL (PLACED FROM ITEM 203-00600)	CY	1,485	\$ 5.30	\$ 7,870.50
	Embankment Package 01 Total Cost				\$ 134,636.55

* CM/GC to utilize pricing submitted as part of Construction Package 01 for like items

Note: Prices include Overhead and Profit



FOR REFERENCE, UNIT PRICES TO BE USED FOR CONSTRUCTION WORK ORDERS
UNLESS OTHERWISE MUTUALLY AGREED.

ATTACHMENT 13					
Embankment Package 02 Cost Proposal					
PAY ITEM NO.	CONTRACT PAY ITEM	UNIT	QUANTITY	UNIT COST	TOTAL COST
203-00600	EMBANKMENT MATERIAL (COMPLETE IN PLACE)	CY	20,056	\$ 14.80	\$ 296,814.00
203-00600	STRIPPING	CY	8,425	\$ 10.80	\$ 90,990.00
207-00205	TOPSOIL (PLACED FROM ITEM 203-00600 STRIPPING)	CY	2,106	\$ 5.30	\$ 11,161.80
	INLET TYPE R L 5 (5 FOOT)	EA	1	\$ 5,400.00	\$ 5,400.00
	MANHOLE SLAB BASE (10 FOOT)	EA	1	\$ 11,410.00	\$ 11,410.00
	24 INCH REINFORCED CONCRETE PIPE (CIP)	LF	60	\$ 94.00	\$ 5,640.00
	WATERPROOFING MEMBRANE	SY	298	\$ 104.60	\$ 31,141.00
	DEWATERING	LS	1	\$ 118,800.00	\$ 118,800.00
	CBC DRAINAGE SYSTEM	LS	1	\$ 67,030.00	\$ 67,030.00
	CONCRETE CBC	LS	1	\$ 584,700.00	\$ 584,700.00
	Embankment Package 02 Total Cost				\$ 1,223,086.80

* CM/GC to utilize pricing submitted as part of Construction Package 01 for like items

** CM/GC to discuss risk and assumptions associated with new line items in their proposal

Note: Prices include Overhead and Profit.



Ames Construction

CM/GC Services for Lemay Ave Realignment
Proposal Clarifications – Not included in approximate page count

GENERAL PROPOSAL CLARIFICATIONS

1. The attached pricing proposal is based on the documents provided in the RFP.
2. Unit prices were developed and based upon the provided quantities in Attachments 9 through 13.
3. All pricing is based on current market conditions for labor, equipment and materials.
4. Construction water is assumed to be purchased from East Larimer County Water District. We have assumed using 1 hydrant on the south end of the project, and 1 hydrant at the north end of the project, with water tanks/stands.

INCLUSIONS

1. 4.65% Sales Tax on all permanent materials. Colorado State Tax excluded (2.90%).
2. Performance and Payment Bonds.
3. Mining and Storm water permits (State Permits)
4. Overhead and indirect costs for project as a whole, finishing in December 2021.
5. Quality Control Management, for current construction package only. Quality control management related to items in future packages will be included in future package pricing – from the same QC contractor as selected for this initial package.

EXCLUSIONS

1. Railroad flagging, to be discussed during CM meetings.
2. Railroad Protective Insurance
3. Builder's Risk and Pollution Liability Insurance.
4. Gross Receipts Tax.
5. Buy America requirements.
6. Removal or relocation of existing utilities. To be complete in coordination with Ames Construction.
7. Temporary shoring.
8. Organic amendments for on-site topsoil.
9. Spraying or control of noxious weeds.
10. Land rental for office trailer space (assume provided on-site).
11. Load, handling, or transporting any contaminated materials if encountered on-site.
12. Global stability analysis for walls.
13. Cost for City of Fort Collins permits. Permits will still be obtained by Ames Construction but it is assumed that the City will waive the fees.
14. Quality Assurance.

EROSION CONTROL CLARIFICATIONS

1. Erosion control for the base package only is included in the lump sum "Erosion Control" bid item. There is a tabulation of erosion control on sheet 177 of the plans for erosion control on alternative package 02, but there is no bid item to price it in. Costs for alternative package 02 are not included in the base package "Erosion Control" item. We did not include them, in the event that alternative package 01 was awarded, and also did not want to contaminate other bid item unit prices.



Ames Construction

CM/GC Services for Lemay Ave Realignment**Proposal Clarifications – Not included in approximate page count****EARTHWORK CLARIFICATIONS**

1. Topsoil stripping to the depths specified on the plans (6" and 24") is included in our pricing. Topsoil that is not to be replaced on-site has been hauled off-site to disposal. Topsoil that remains on-site is stockpiled on site until it is ready to be replaced.
2. Embankment bid item includes limited on-site cut-to-fill, in addition to the imported borrow embankment material. Bid item also includes subgrade prep (6" depth), subgrade proofrolling, and subgrade finishing / slope tracking.
3. Embankment was placed at a higher production, up to a "hold point" elevation of 4965'. At this elevation, Ames Construction assumed that the construction of the rockery walls would limit the productive import hauling. Beyond elevation 4965', approximately 50% of the production of import embankment was estimated.
4. Dust control for Ames work is included.

BORROW SOURCE CLARIFICATIONS

1. Ames Construction has included incidental traffic flaggers at the entrance/exit to our proposed borrow source/pit.
2. Ames Construction has included incidental erosion control – silt fence and track out pads – at the borrow site to comply with Colorado Department of Natural Resources requirements for a mining permit.
3. Ames Construction has included reclaiming the borrow site, in compliance with Colorado Department of Natural Resources requirements for a mining permit.

DRAINAGE CLARIFICATIONS

1. Ames Construction has included temporary concrete barrier within the A4 Lateral pipe bid item – 48" RCP. This barrier will serve as roadway worker protection, between the pipe crew and the active roadway. It is priced using 250 LF of barrier, moved approximately 5 times to cover the crew while they install the 48" RCP A4 Lateral. Every 250 LF will be structured to where there are tapers, and end protections are not necessary.
2. Ames Construction has included the purchase of bentonite and labor/equipment time to reconstruct the irrigation ditch channel after the A4 Lateral has been installed. This cost is also included in the 48" RCP bid item.
3. Ames Construction has priced standard 96" diameter manholes in place of box base manholes. The manholes on this project are not tall enough to gain the benefit of a box base manhole.
4. Ames Construction has priced the drainage as RCP, as specified. However, we have received quotes for HDPE pipe alternate for these drainage runs, at a cost discount. If HDPE is approved to be used, pricing can be reduced.

WALL CLARIFICATIONS

1. Ames will scarify and re-compact 6" under the class 1 backfill for the rockery walls.
2. The structural backfill Class 1 bid item includes the Class 2 backfill in front of Walls 1-10 and Walls 11-14.
3. There are some quantities discrepancies with the Class 1 backfill and mechanical reinforcement of soil. The overall current quantity per the bid form is 8,908 CY for Class 1 and 6,932 CY for mechanical



Ames Construction

CM/GC Services for Lemay Ave Realignment**Proposal Clarifications – Not included in approximate page count**

reinforcement of soil. Ames internal takeoff quantities are 14,980 cy of Class 1 backfill and 9,118 CY for mechanical reinforcement of soil. This quantity will likely change again after the final wall design is finished and the RL lengths are established.

4. It is assumed that the material for the mechanical reinforcing of the soil will be included with the wire wall facing. The wire wall facing will have wire mesh panels that will extend into the reinforcement zone.
5. The assumed footing dimensions for walls 10-14 are the lengths of walls by 1' thick by 3' wide.

IRRIGATION CLARIFICATIONS

1. In accordance with drawing sheets 46 and 47, Ames Construction has included everything shown on the detail (sheet 47), including the 2" water tap at existing waterline, the water meter & pit, shutoff valve and valve box, air injection port, backflow preventer assembly, and downstream cap.
2. Ames Construction has included the cost of purchasing the 2 EA water meters. If City is to supply water meters, cost can be reduced.
3. Ames Construction has included estimated cost for asphalt patching at the water main tap locations. It is not clear whether or not full-depth asphalt patching is required, or if we can utilize a temporary measure for the patch.

TRAFFIC CONTROL CLARIFICATIONS

1. Bid item "Construction Traffic Control (Devices Only)" is priced based on the quantity tabulation on sheet #15 of the drawings. That is, it only includes the construction traffic signs shown on the traffic control plan on sheet #15. As the design progresses, and the traffic control plan is finalized, pricing may be altered if features are added or removed.
2. Bid items "Traffic Control Inspection" and "Traffic Control Management" are priced based on the bid form quantity, as it conflicts with the quantity in the tabulation on sheet #15.
3. Tabulated quantities for "Modified Epoxy Pavement Marking (20 GAL)" and "Pavement Marking Paint (Waterborne) (20 GAL)", shown on sheet #15, are included in the "lump sum" item for Construction TC (Devices), as there was no other bid items to include them in, and we did not want to inflate or confuse unit prices for other bid items.

BOX CULVERT (PACKAGE 02) CLARIFICATIONS

1. **Waterproofing Membrane**
 - a. Clarifications: The waterproofing membrane for the CBC consists of two different types. The assumed under slab waterproofing will be GCP 300R and the assumed wall waterproofing will be GCP Bituthene 3000 self adhering sheet membrane with Hydroduct 220 drain board.
2. **Dewatering:**
 - a. Approach to Pricing: The approach for this bid item is to account for the dewatering while building the concrete box culvert. The box will be 4'-6' under the existing grade and based upon boring locations C-3 and P-10 the bottom of the box culvert will be 4' below the groundwater elevation. Ames will install a series of well points with pump that pump water to a water tank weir system.



Ames Construction

CM/GC Services for Lemay Ave Realignment**Proposal Clarifications – Not included in approximate page count**

These well points will draw the water table down 6-8' so that the box culvert can be installed in dry conditions.

- b. Assumptions: It is assumed that the bottom of the box culverts is at elevation 4946' and it is assumed that the groundwater elevation in the location of the box is 4950'.
- c. Clarifications: The water will be pumped to water tanks that will then allow for the water to be filtered out and placed back into the ground. The discharge point will be tested weekly, reported and submitted to follow local and state guidelines.

3. CBC Drainage System:

- a. Approach to pricing: The approach for this bid item was to address the drainage behind the wing walls per the M&S standards and also to account for drainage within the box culvert because it will be at a low point where water will collect and it will need to be collected and pumped out. The drainage system will be needed for groundwater and surface flows into the box that lead to an outfall. A collection and pump system is included in this pricing.
- b. Assumptions: It is assumed that the box will occur at a low point and it will collect water. Trench drains have been placed in the concrete slab of the box culvert along both walls to handle sheet flows of water. These trench drains will flow into a box base manhole that will have a separator pump in it that will then pump the water to an outfall. The wing walls for the box culvert will also have drainage per CDOT M&S Standards M-601-20.

4. Concrete CBC:

- a. Per the RFP plans, the box culvert dimensions are 18' wide x 103' long (the basis of the bid item quantity and unit of measure). Per Addendum #2, question #7, the box was requested to be 10' wide but the unit of measure was not revised. Our price is based on a 10' wide x 12' tall x 103' long box. We changed the quantity in the bid form to 1 LS in order to provide price that was not skewed by a quantity that did not represent the scope of work. The LS price is based on the following clarifications below:
- b. The concrete box culvert unit price is made up of various scopes of work that are generally broken out as pay items per CDOT. All of the below line items are included in the unit price for the box culvert.

i. CONCRETE CBC Wing Walls	196.000	CY
ii. CONCRETE CBC (Precast)	103.000	LF
iii. STRUCTURE EX	1,328.000	CY
iv. STRUCTURE BACKFILL	229.000	CY
v. CLASS B SLAB (Pedestrian Use)	171.000	CY
vi. CBC INVERT (Alternate 1)	221.000	CY
- c. Assumptions: The wing walls, toe walls and apron for the box culvert will follow the CDOT M&S standards M-601-20. The dimension of the box will follow the Q&A dimensions along with the dimensions from the CDOT M&S standards. The precast box is rated for HL-93 loading and is 10' wide x 12' tall. The structure excavation is included to account for the excavation from existing grade to bottom of slab and will follow M-206-1. The structural backfill will follow CDOT M&S Standards M-206-1. The Class B Slab is for the base slab concrete since the box culvert will be for



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CM/GC Services for Lemay Ave Realignment

Proposal Clarifications – Not included in approximate page count

pedestrian use. The CBC invert is to place 6" of Class 6 base under the invert slab to account for unsuitable materials and follows the details provided in M-603-3 Note #3.

INDIRECT CLARIFICATIONS

1. Indirect salaries are included in this initial construction package, but will overlap with future construction packages. For future construction packages, these same salaried personnel will overlap their time on those packages, and costs will not be included on future packages. Only additional salaried personnel costs, necessary for future construction packages will be included in the future bids. We have developed a draft indirect salary matrix to reflect this – this is not final, but shows an estimate of what additional personnel will be included on future packages. See below.



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PROJECT: CM/GC SERVICES FOR LEMAY AVE REALIGNMENT**HOURLY EQUIPMENT RATES***All rates include ownership, fuel and maintenance (excludes operator and OH&P)*

<u>Equipment Unit</u>	<u>Make</u>	<u>Rate/Hr</u>
623 Scraper	CAT	\$232.10
140 Blade w/GPS	CAT	\$103.50
14 Blade w/GPS	CAT	\$121.90
D6 Dozer w/GPS	CAT	\$142.76
D8 Dozer	CAT	\$232.10
Bobcat	IR	\$49.16
950 Wheel Loader	CAT	\$74.75
966 Wheel Loader	CAT	\$99.50
980 Wheel Loader	CAT	\$125.35
Small Trencher (Silt Fence)	Vermeer	\$17.75
Mini Excavator	CAT	\$44.28
312 Excavator	CAT	\$77.70
320-322 Excavator	CAT	\$83.99
336 Excavator	CAT	\$109.26
336 Excavator w/Hammer	CAT	\$169.87
349 Excavator	CAT	\$189.41
349 Excavator w/Hammer	CAT	\$250.02
Forklift	CAT	\$69.84
60' Manlift	JGL	\$43.50
Boom Truck (>23 ton)	National	\$80.30
Hydraulic Crane (60 ton)	Grove	\$140.63
Track Crane (100 ton)	Manitowoc	\$265.76
Hydro Truck Crane (300 ton)	Liebherr	\$535.00
Hydro Truck Crane (500 ton)	Liebherr	\$675.00
Plate & Jump Jack Compactor	Various	\$9.60
Ramex Compactor	Various	\$15.00
433 Compactor	CAT	\$46.00
563 Compactor	CAT	\$65.32
Survey Crew Equipment	Trimble	\$17.60
Deck Finishing Machine	Bidwell	\$23.20
Conc Vibratory Screed	Various	\$19.55
Genset (4-7KW)	Honda	\$17.43
Welding Machine	Lincoln	\$9.09
185 CFM Compressor	IR	\$11.06
Ground Heater E3000	Ground Heater	\$46.26
Pavement Sawcut Machine	Various	\$19.32
Street Sweeper	Elgin	\$92.21



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PROJECT: CM/GC SERVICES FOR LEMAY AVE REALIGNMENT**HOURLY EQUIPMENT RATES (continued)***All rates include ownership, fuel and maintenance (excludes operator and OH&P)*

<u>Equipment Unit</u>	<u>Make</u>	<u>Rate/Hr</u>
VacTruck (Potholing)	MACX	\$184.00
Light Plant	IR	\$8.66
Concrete Pump Truck	Putzmeister	\$116.00
Brush Hog	Prentice	\$228.85
Trench Box	Various	\$11.20
Bedding Box	Various	\$11.20
Tractor w/Disk or Mower	JD	\$139.50
4000 Gal Water Truck	KW	\$51.75
Tandem Dump Truck	KW	\$67.58
Semi w/Flatbed	KW	\$78.48
Semi w/Belly-Side Dump	KW	\$78.48
Small Lowboy w/Trailer	KW	\$93.15
Large Lowboy w/Trailer	KW	\$165.60
Chevy 4x4 Pickup	Chevrolet	\$15.00
1-Ton Flatbed Truck	Chevrolet	\$16.00
2-Ton Service Truck	KW	\$50.00
2-Ton Fuel/Lube Truck	KW	\$65.00
D30 Pile Hammer	Delmag	\$113.67
Crane Vibro Hammer	Hammer & Steel	\$151.29
Backhoe Vibro Hammer	Hammer & Steel	\$151.29
Excavator Hammer		\$60.62
Labounty Pulverizer	Labounty	\$60.62
2"-4" Water Pump	Various	\$16.47
6" Water Pump	Sykes	\$17.83
Genset (8-30KW)	IR	\$17.43
Genset (31-80KW)	IR	\$29.56
Genset (81-400KW)	IR	\$113.43
10k Gallon Water Stand		\$12.00

Add-ons to Above Rates:

OH&P 8%



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Ames Construction

PROJECT: CM/GC SERVICES FOR LEMAY AVE REALIGNMENT**HOURLY CRAFT AND FOREMAN LABOR RATES***All rates include labor burden (excludes OH&P and STS Add-ons)*

<u>Description</u>	<u>Notes</u>	<u>Rate/Hr</u>	<u>Comments (if applicable)</u>
Secretary/Admin		\$44.49	
Carpenter		\$53.81	
Concrete Finisher		\$53.81	
Ironworker		\$60.44	
Laborer: Concrete		\$47.18	
Laborer: General		\$44.53	
Laborer: Pipe		\$45.85	
Operator: Bidwell Machine		\$53.81	
Operator: Tractors/Skidsteers		\$52.49	
Operator: Crane		\$67.09	
Operator: Dozer		\$55.14	
Operator: Excavator		\$59.12	
Operator: Forklift		\$53.81	
Operator: Motor Grader		\$60.44	
Operator: Wheel Loader		\$55.14	
Operator: Street Sweeper		\$55.14	
Operator: Compactor		\$52.49	
Operator: Scraper		\$51.82	
Operator: Trencher		\$52.49	
Pile Driver		\$53.81	
Pipelayer		\$48.50	
Surveyor		\$69.74	Addon Req'd: Pickup & Surv Crew Equip
Survey Technician		\$77.70	
Boom/Flatbed Truck Driver		\$51.82	
Belly-Side Dump Driver		\$51.82	
Water Truck 4,000 gal		\$51.82	
Mechanic/Oiler		\$53.81	Addon Req'd: Service Trk
Welder		\$56.47	Addons Req'd: 1-Ton Trk & Weld Machine
General Foreman	Dirt, Conc, Pipe	\$64.43	Addon Req'd: Pickup
Pile Driver Foreman		\$77.70	Addon Req'd: Pickup

Add-ons to Above Rates:

OH&P	8%
Safety STS	\$0.70 per MH
Project STS	\$1.25 per MH



EXHIBIT F INSURANCE REQUIREMENTS

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not reduce coverage or limits and will not be cancelled, except after thirty (30) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

- A. **Workers' Compensation & Employer's Liability.** The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this Agreement:
 1. Workers' Compensation insurance with statutory limits as required by Colorado law.
 2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.
- B. **Commercial General & Vehicle Liability.** The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$1,000,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.





EXHIBIT G CONFIDENTIALITY

IN CONNECTION WITH SERVICES provided to the City of Fort Collins (the "City") pursuant to this Agreement (the "Agreement"), the Service Provider hereby acknowledges that it has been informed that the City has established policies and procedures with regard to the handling of confidential information and other sensitive materials.

In consideration of access to certain information, data and material (hereinafter individually and collectively, regardless of nature, referred to as "information") that are the property of and/or relate to the City or its employees, customers or suppliers, which access is related to the performance of services that the Service Provider has agreed to perform, the Service Provider hereby acknowledges and agrees as follows:

That information that has or will come into its possession or knowledge in connection with the performance of services for the City may be confidential and/or proprietary. The Service Provider agrees to treat as confidential (a) all information that is owned by the City, or that relates to the business of the City, or that is used by the City in carrying on business, and (b) all information that is proprietary to a third party (including but not limited to customers and suppliers of the City). The Service Provider shall not disclose any such information to any person not having a legitimate need-to-know for purposes authorized by the City. Further, the Service Provider shall not use such information to obtain any economic or other benefit for itself, or any third party, except as specifically authorized by the City.

The foregoing to the contrary notwithstanding, the Service Provider understands that it shall have no obligation under this Agreement with respect to information and material that (a) becomes generally known to the public by publication or some means other than a breach of duty of this Agreement, or (b) is required by law, regulation or court order to be disclosed, provided that the request for such disclosure is proper and the disclosure does not exceed that which is required. In the event of any disclosure under (b) above, the Service Provider shall furnish a copy of this Agreement to anyone to whom it is required to make such disclosure and shall promptly advise the City in writing of each such disclosure.

In the event that the Service Provider ceases to perform services for the City, or the City so requests for any reason, the Service Provider shall promptly return to the City any and all information described hereinabove, including all copies, notes and/or summaries (handwritten or mechanically produced) thereof, in its possession or control or as to which it otherwise has access.

The Service Provider understands and agrees that the City's remedies at law for a breach of the Service Provider's obligations under this Confidentiality Agreement may be inadequate and that the City shall, in the event of any such breach, be entitled to seek equitable relief (including without limitation preliminary and permanent injunctive relief and specific performance) in addition to all other remedies provided hereunder or available at law.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/22/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CSDZ, LLC 225 South Sixth Street, Suite 1900 Minneapolis MN 55402	CONTACT NAME: Amy Sanderson PHONE (A/C, No, Ext): 612-349-2400 FAX (A/C, No): 612-349-2490 E-MAIL ADDRESS: asanderson@csdz.com														
INSURED Ames Construction, Inc. 2500 County Road 42 W Burnsville, MN 55337	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Travelers Indemnity Co of America</td> <td style="text-align: center;">25666</td> </tr> <tr> <td>INSURER B : Travelers Property Casualty Co. America</td> <td style="text-align: center;">25674</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Travelers Indemnity Co of America	25666	INSURER B : Travelers Property Casualty Co. America	25674	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER F :															

COVERAGES**CERTIFICATE NUMBER:** 330789500**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contr Liab Per ☒ Policy Form/XCU GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			VTC2HCO1H525546TIA20	12/1/2020	12/1/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			VTC2JCAP1H525534TIL20	12/1/2020	12/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB1L1177942025K UB0L8446742025R	12/1/2020 12/1/2020	12/1/2021 12/1/2021	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Stop Gap			UB1L1177942025K	12/1/2020	12/1/2021	Applies to ND, OH, WA, WY

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Lemay Ave Realignment

Additional Insured only if required by written contract with respect to General Liability and Automobile Liability applies on a primary basis and the insurance of the additional insured shall be non-contributory. The City of Fort Collins, Colorado, its officers, agents and employees, and BNSF

The following supersedes the cancellation wording: Should any of the above described policies be cancelled before the expiration date, 30 Days written notice (10 Days for Non-Payment) will be delivered to the certificate holder.

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

City of Fort Collins, Colorado
 4316 LaPorte Avenue
 Fort Collins CO 80522

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Applicant: Ames Construction, Inc.
Name of Site: Burnham Property Borrow
Date: May 3, 2021

EXHIBIT L - Permanent Man-Made Structures

There are three permanent man-made structures within 200 feet of the proposed mining operation. The first structure is County Road 110 that runs along the north side of the mining operation. The second is two power lines, belonging to Poudre Valley REA that run along County Road 110 and through the proposed mining pit. The final structure is a fiber optic line belonging to Nunn Telephone Company that runs in County Road 110.

Please see the attached Structural Agreements.

STRUCTURE AGREEMENT

THIS AGREEMENT is made and entered into this day of April, 2021, by and between the County of Weld, a body corporate and politic of the State of Colorado, by and through its Board of County Commissioners, ("County") and Ames Construction, hereinafter referred to as "Operator".

WHEREAS, Operator is has received Permit # M-2021-019 from the Colorado Division of Reclamation and Mine Safety (DRMS) for a mining pit generally located on the following property:

Section 6 / Township 9N / Range 67W

Also known as: 6932 County Road 110, Carr, CO 80612
(the "Burnham Property Borrow")

WHEREAS, Operator's DRMS permit requires it to enter into a structure agreement with all owners of structures within 200 feet of the DRMS permit boundary, and

WHEREAS, County owns certain structure(s) within 200 feet of the permit boundary, as follows:

County Road 110

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. Exhibits. The following exhibits are incorporated herein:

Exhibit A, General Vicinity Map
Exhibit B, Slope Study (Not Applicable)
Exhibit C, Access Permit
Exhibit D, ROW Permit (Not Applicable)
Exhibit E, Special Transport Permit (Not Applicable)
Exhibit F, Road Maintenance Agreement

2. No County Obligation. Operator agrees that County shall have no obligation to comply with the DRMS Permit or otherwise assist, contribute to, or perform any work required by said permit. Nothing herein shall have any bearing on Weld County's issuance or non-issuance of any permit, license, or other authorization.

3. Effective Date. This Agreement shall be effective upon mutual execution by all undersigned Parties, and shall be enforceable for as long as the DRMS Permit is active, including through any require period of remediation.

4. Independent Contractor. Operator agrees that it is an independent contractor and that its officers, agents or employees will not become employees of County, nor entitled to any employee benefits from County as a result of the execution of this Agreement. Operator shall be solely responsible for its acts and those of its agents and employees for all acts performed pursuant to this Agreement. Operator, its employees and agents are not entitled to unemployment insurance or workers' compensation benefits through County. Operator shall not have authorization, express or implied, to bind County to any agreement, liability or understanding, except as expressly set forth in this Agreement.

5. Indemnification. Operator shall defend, indemnify and hold harmless County, its officers, agents, and employees, from and against injury, loss damage, liability, suits, actions, or claims of any type or character arising out of any work done in fulfillment of the terms of the DRMS Permit. This paragraph shall survive expiration or termination hereof. It is agreed that the Operator will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. Operator agrees to waive all rights of subrogation against the County its associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Operator under the DRMS Permit.

6. Notices. Any notice to be made under this Agreement shall be sent as follows:

- personal service by a reputable courier service requiring signature for receipt; or
- five (5) days following delivery to the United States Postal Service, postage prepaid addressed to a party at the address set forth in this contract; or
- electronic transmission via email at the address set forth below, where a receipt or acknowledgment is required by the sending party; or
- transmission via facsimile, at the number set forth below, where a receipt or acknowledgment is required by the sending party.

Either party may change its notice address(es) by written notice to the other.

Notification Information:

Operator:

Name: Trent Irick
Position: Regional Vice President
Address: 18450 E 28th Avenue
Address: Aurora, CO 80011
E-mail: TrentIrlick@amesco.com
Facsimile: NA

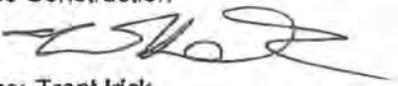
County:

Name: Clay Kimmi
Position: Senior Engineer
Address: 1111 H Street
Address: Greeley, CO 80631
E-mail: ckimmi@weldgov.com
Facsimile: (970) 304-6497

- 7. Compliance with Law and with this Agreement.** Operator shall strictly comply with all applicable federal and state laws, rules and regulations in effect or hereafter established and pertaining to the work to be performed under the DRMS Permit, and shall further comply with this Agreement and its exhibits, including but not limited to, the Slope Study.
- 8. Entire Agreement/Modifications.** This Agreement including the Exhibits attached hereto and incorporated herein, contains the entire agreement between the parties with respect to the subject matter contained in this Agreement. This instrument supersedes all prior negotiations, representations, and understandings or agreements with respect to the subject matter contained in this Agreement. This Agreement may be changed or supplemented only by a written instrument signed by both parties.
- 9. Severability.** If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the parties.
- 10. Governmental Immunity.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.
- 11. No Third Party Beneficiary.** It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.
- 12. Board of County Commissioners of Weld County Approval.** This Agreement shall not be valid until it has been approved by the Board of County Commissioners of Weld County, Colorado or its designee.
- 13. Choice of Law/Jurisdiction.** Colorado law, and rules and regulations established pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules and/or regulations shall be null and void. In the event of a legal dispute between the parties, Operator agrees that the Weld County District Court shall have exclusive jurisdiction to resolve said dispute.
- 14. Attorneys Fees/Legal Costs.** In the event of a dispute between County and Operator, concerning this Agreement, the parties agree that each party shall be responsible for the payment of attorney fees and/or legal costs incurred by or on its own behalf.
- 15. Binding Arbitration Prohibited:** Weld County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

Acknowledgment. County and Operator acknowledge that each has read this Agreement, understands it and agrees to be bound by its terms. Both parties further agree that this Agreement with the attached Exhibits is the complete and exclusive statement of agreement between the parties and supersedes all proposals or prior agreements, oral or written, and any other communications between the parties relating to the subject matter of this Agreement.

OPERATOR:
Ames Construction

By: 
Name: Trent Irick
Title: Regional Vice President

Date: April 14, 2021

WELD COUNTY:

ATTEST:
Weld County Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO

BY: _____
Deputy Clerk to the Board

Steve Moreno, Chair

Damien Chavarria

From: Clayton Kimmi <ckimmi@weldgov.com>
Sent: Tuesday, March 30, 2021 3:13 PM
To: Damien Chavarria; Kirk Bergstrom
Cc: Bob Choate; Clayton Kimmi
Subject: RE: Burnham Property Borrow maps for structure agreement on County Road 110

I have taken a look at the drawings you sent over. I have also talked it over with Bob Choate. Based on the fact that the operation will be located over 200 feet from the road and there will be no pit with slopes that could fail back into our ROW, we have determined that a slope stability study is not required. Please attach a copy of this email to your structure agreement as the appropriate Exhibit.

Let me know if you have any questions.

Clay Kimmi, P.E.
Senior Engineer
Weld County Public Works
1111 H St
PO Box 758
Greeley, CO 80632-0758

O: 970-304-6496 x 3741
F: 970-304-6497



Confidentiality Notice: This electronic transmission and any attached documents or other writings are intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. If you have received this communication in error, please immediately notify sender by return e-mail and destroy the communication. Any disclosure, copying, distribution or the taking of any action concerning the contents of this communication or any attachments by anyone other than the named recipient is strictly prohibited.



Weld County Public Works Dept.
1111 H Street
P.O. Box 758
Greeley, CO 80632
Phone: (970)304-6496
Fax: (970)304-6497

ACCESS PERMIT APPLICATION FORM

Property Owner

Name Arlene Burnham
Company Self Employeed
Address 6932 County Road 110
City Carr State CO Zip 80612
Phone 970-897-2654
E-mail kinner4860@gmail.com

Information

The access is on CR 110
Nearest intersection: CR 110 & CR 15
Distance from intersection: 1,485 ft.
Parcel number: 045306100016
Section/Township/Range: 6 / 9N / 67W
Total number of existing accesses to parcel: 1
Total number of proposed accesses: 3
Latitude 40.7832694 Longitude -104.9298055
Planning/building case number _____

Description of Work

Ames Construction, Inc. is planning to mine fill material for the N Lemay Avenue Realignment project for the city of Fort Collins.

Authorized Agent/Applicant (if different from Owner)

Name Kirk Bergstrom
Company Ames Construction, Inc.
Address 18450 E 28th Ave
City Aurora State CO Zip 80011
Phone 720-334-3680
E-mail KirkBergstrom@amesco.com

Proposed Access Information

Culvert size & type (15" CMP/RCP min.) 2 - 24" CMP
Materials used to construct access On-Sit Material
Access construction schedule 4/12/19 or earlier
Approx. width of access 30'

Proposed Access Count

Residential 1
Commercial 0
Oil and Gas 0
Agricultural 0
Temporary 2

Existing Access Count

Residential 1
Commercial 0
Oil and Gas 0
Agricultural 0

Required Attached Documents

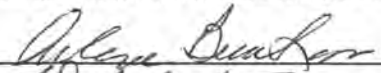
- Property map or sketch (template available on pg. 2) indicating all proposed and existing accesses
- Access Pictures (N, S, E, & W at the location where the access meets a county maintained road)
- Access Authorization Form (Not required if the application is signed by the property owner)
- Additional application materials may be required by the Public Works Department

Fee schedule

\$150 - Temporary, Small Commercial & Residential
\$300 - Industrial & Large Commercial

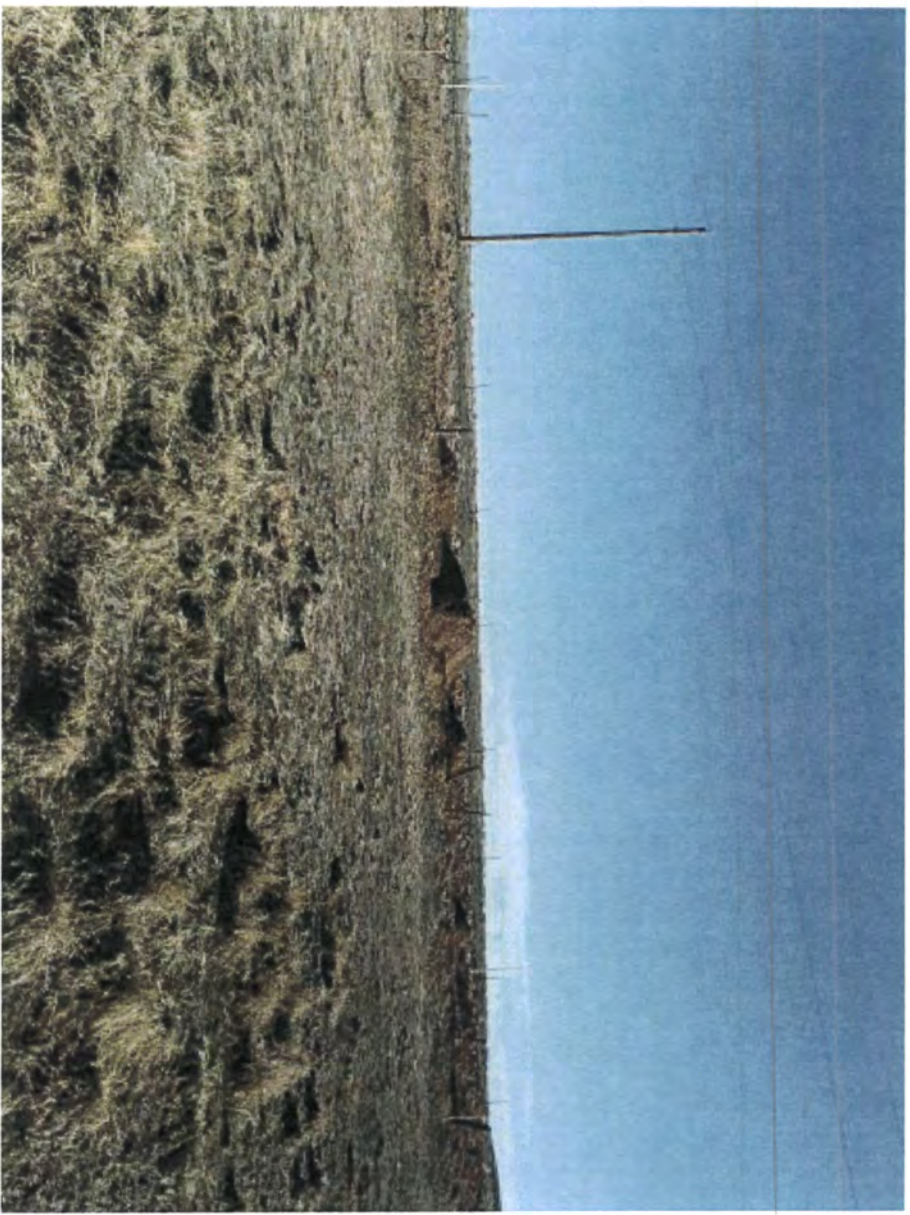
Submit application to accesspermits@weldgov.com

By accepting this permit, the undersigned Property Owner/Authorized Agent, under penalty of perjury, verifies they have received all pages of the permit application; they have read and understand all the permit requirements and provisions set forth on all pages. By virtue of their signature the Property Owner/Authorized Agent is bound by and agrees to comply with all said permit requirements and provisions, all Weld County ordinances, and state laws regarding access construction.

Signature  Printed Name Arlene Burnham Date 4/6/2021
Signature  Printed Name Kirk Bergstrom Date 4/5/2021
(In case of multiple Property Owners/Authorized Agents)

Accesses must be constructed within 1 year of issuance. An extension can be requested from the Weld County Public Works Department.
Accesses must be in accordance to Chapter 12, Article V and Appendix 12-A of County Code

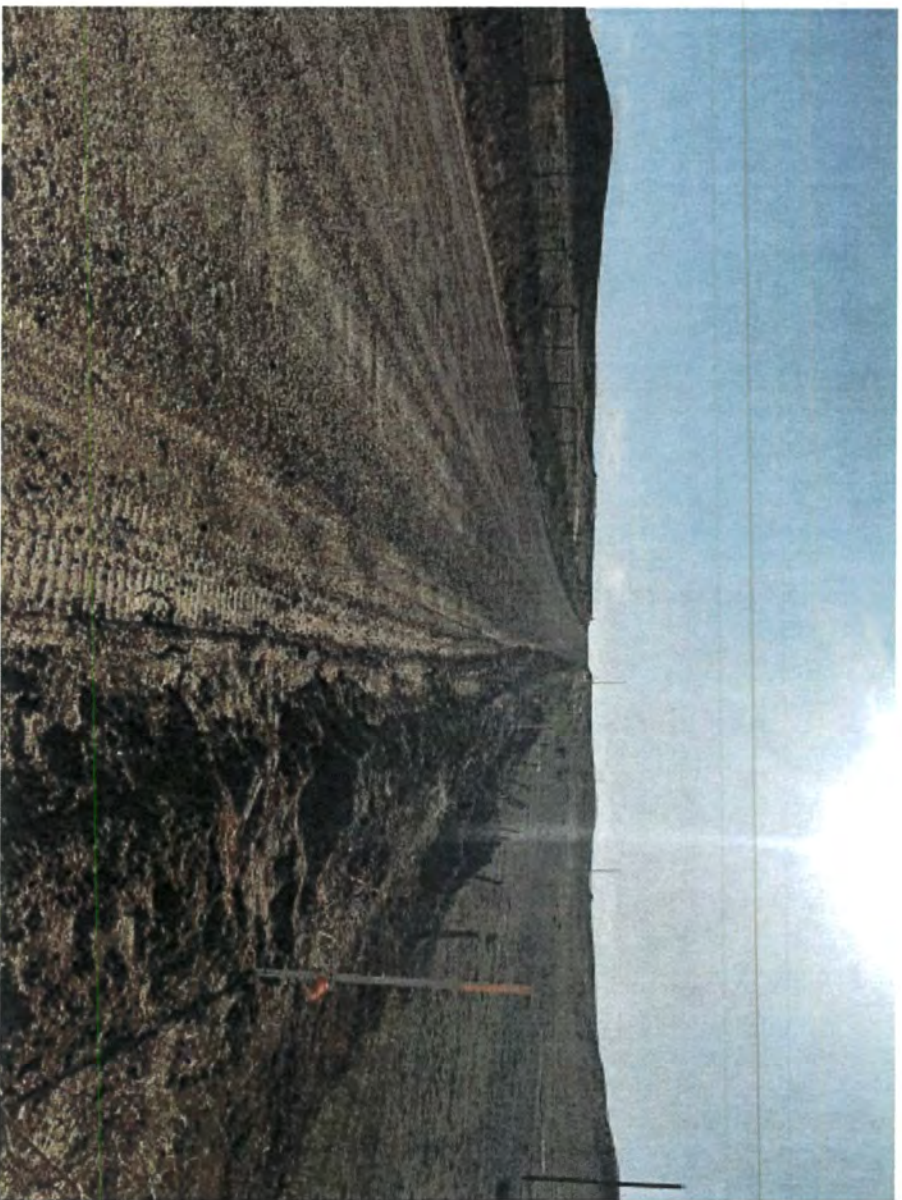
Western Exit



Looking North



Looking South

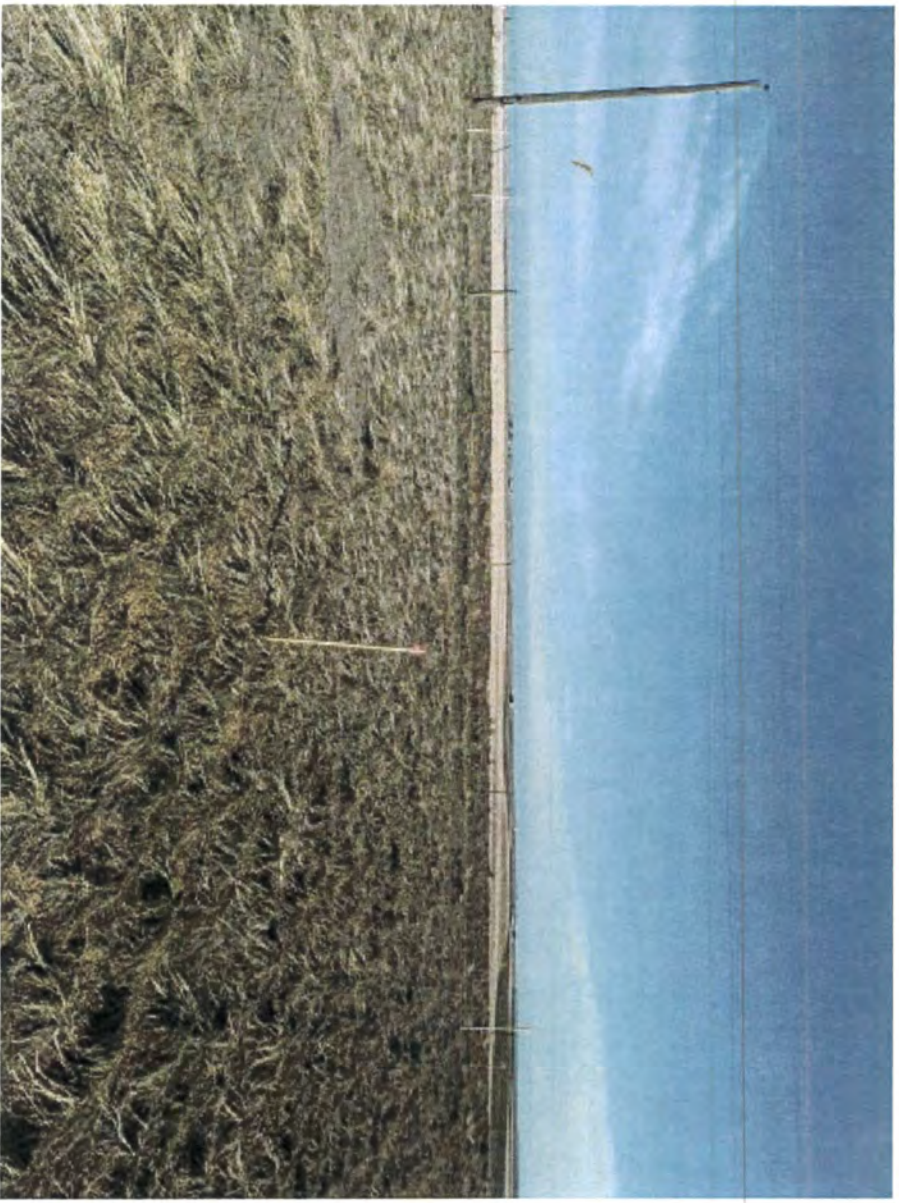


Looking East

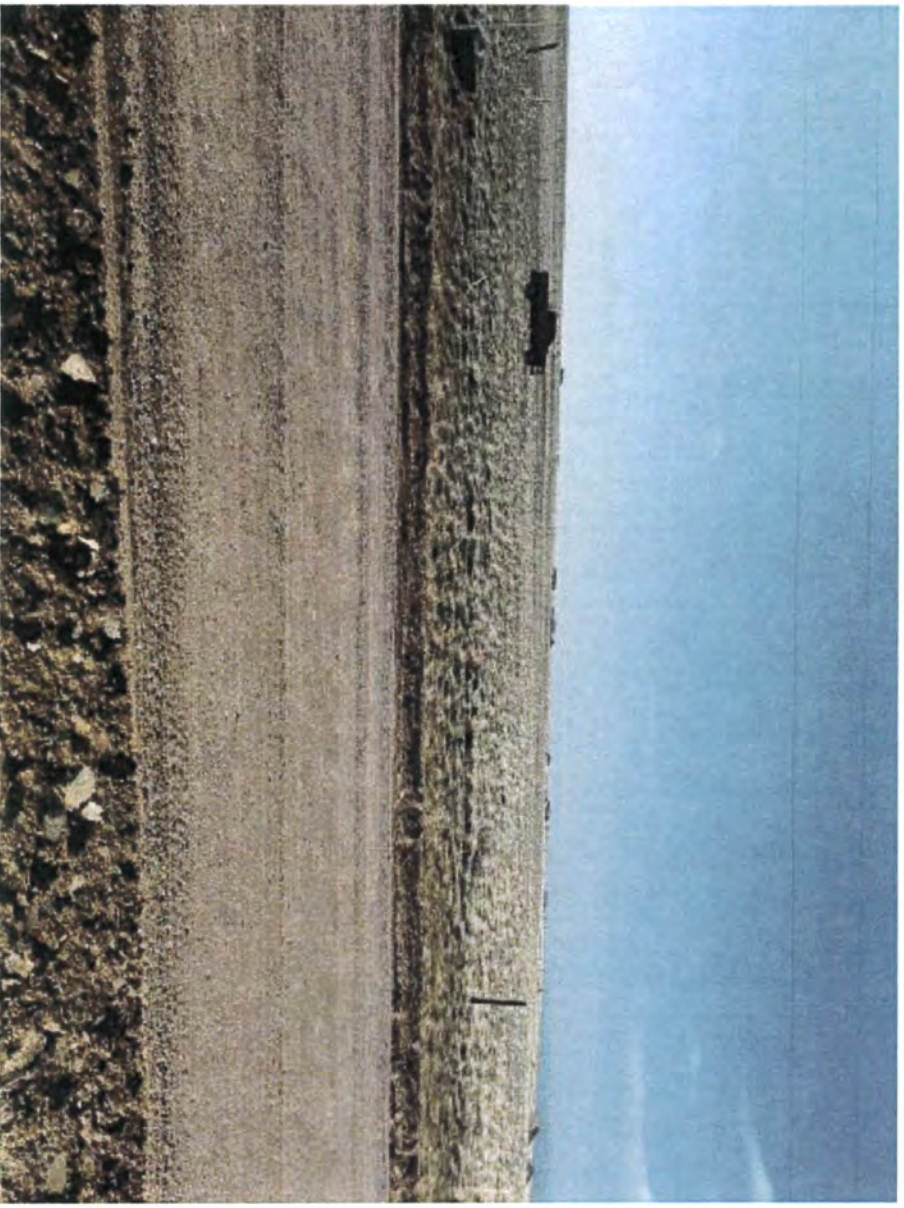


Looking West

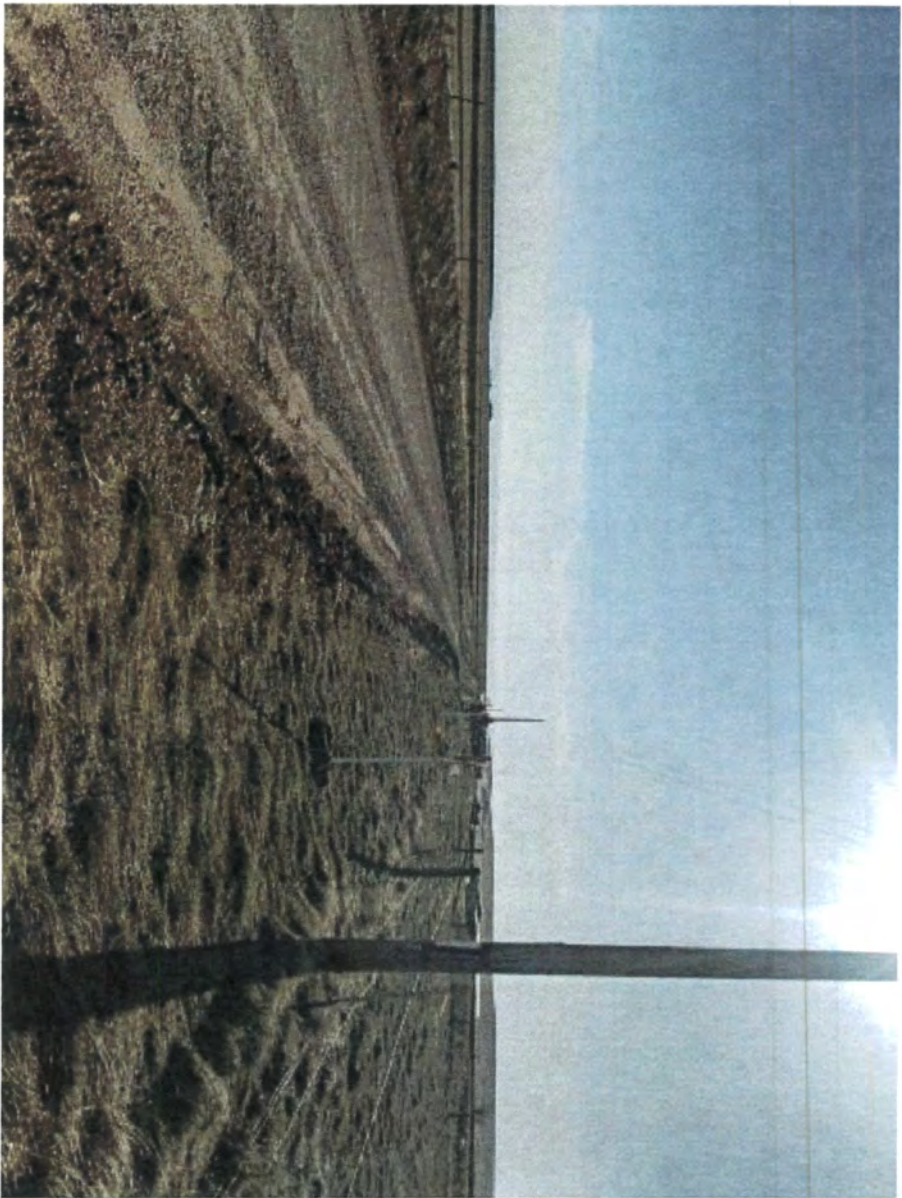
Eastern Entrance



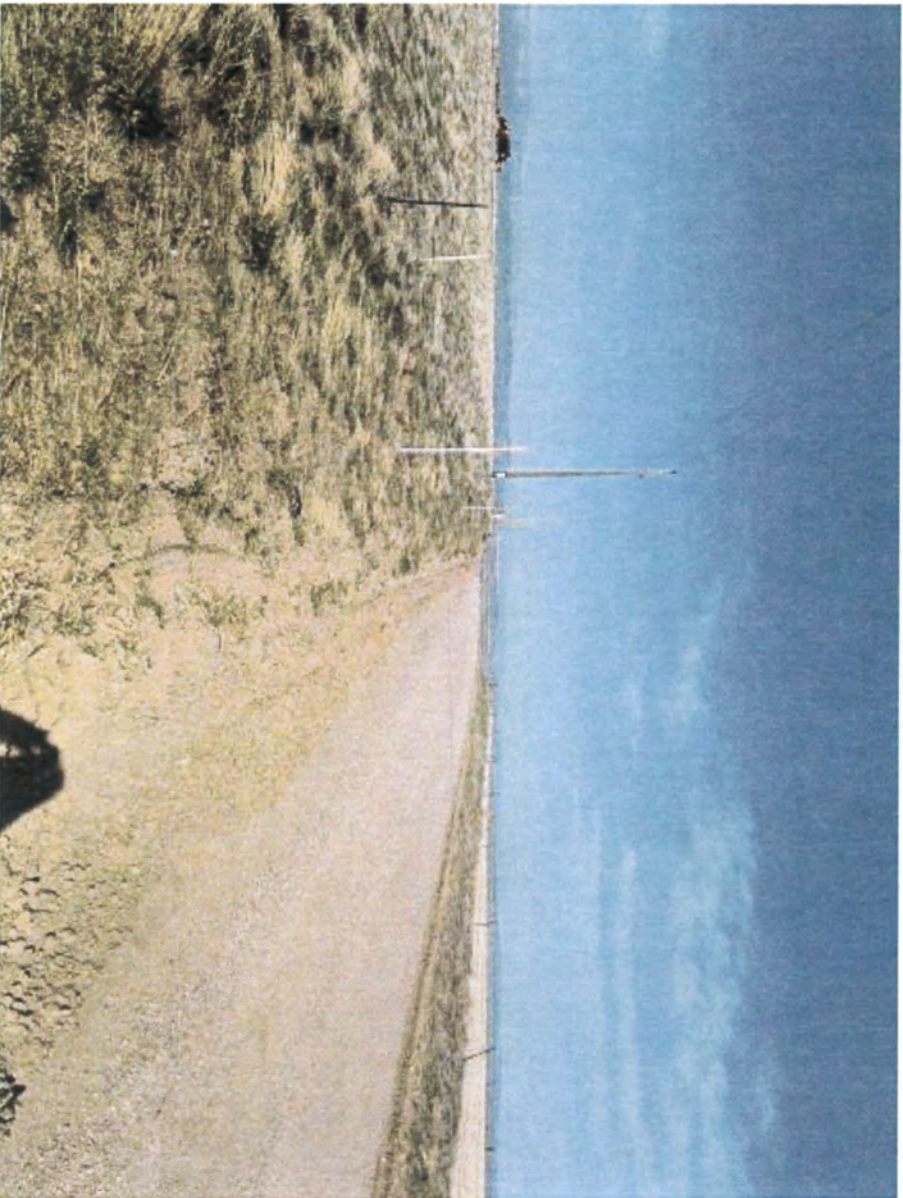
Looking North



Looking South



Looking East



Looking West

ROAD MAINTENANCE AGREEMENT ACCORDING TO
REQUIREMENTS DURING THE CONSTRUCTION PERIOD
AMES Construction, Inc. – TAP21-0004

THIS AGREEMENT is made this 14 day of April, 2021, by and between AMES Construction, Inc., a corporation organized under the laws of the State of MINNESOTA, whose address is 18450 E. 28th Avenue, Aurora, Colorado 80011, hereinafter referred to as "Operator," authorized to do business in the State of Colorado, and the County of Weld, a body corporate and politic of the State of Colorado, by and through its Board of County Commissioners, whose address is 1150 "O" Street, Greeley, Colorado 80631 hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Operator is the lessee of the following described property in the County of Weld, Colorado:

Being a part of the N1/2 NE1/4 of Section 6, Township 9
North, Range 67 West of the P.M., Weld County, Colorado

hereinafter referred to as "the Property," and

WHEREAS, Operator has received the Department of Public Works conditional approval of TAP21-0004, and

WHEREAS, the Operators facility will generate additional vehicles and heavy traffic directly associated with TAP21-0004, for an extended period of time; and

WHEREAS, the County, and Operator are desirous of agreeing to terms involving regulation of haul routes, traffic control, and road wear arising from such additional traffic.

NOW, THEREFORE, IN CONSIDERATION OF the foregoing and of the promises and covenants contained herein, the parties hereto promise, covenant and agree as follows:

Part I: SITE SPECIFIC PROVISIONS

A. Reserved

B. Haul/Travel Routes: The Operator shall be financially responsible for its proportional share of the associated costs for maintaining and/or improving designated haul/travel routes.

1.0 Haul Routes. The following roads are designated as haul/travel routes for the Property:

1) East and west along CR 110 between approved site accesses and Larimer County Line.

2.0 Haul trucks shall enter and exit the site at the approved access(es) on CR 110 and travel east-west to the nearest paved road for further dispersal. Any County roads used by traffic associated with TAP21-0004 may become part of the established haul/travel routes.

3.0 Weight Limits. No travel vehicles may exceed CDOT required specifications for pounds-per-axle and axle configurations unless overweight permits have been applied for and granted.

4.0 Temporary Deviations. In unusual or rare occasions, if projects mandate deviation from the

above-mentioned haul/travel route for a limited period (six months or less), Weld County Public Works may authorize, in writing, the deviation. In that circumstance, haul/travel vehicles will utilize paved county roads whenever possible. A deviation from the established haul/travel route lasting more than six (6) months or requests for one (1) or more deviations within a 12-month period shall authorize the County to change the haul/travel routes designated herein, and provide notice to the Operator.

5.0 Haul Route Signage. Operator shall install travel route signs, if applicable, as per Manual of Uniform Traffic Control Devices standards, at all exit points of the Property which can be clearly seen by drivers leaving the facility and which clearly depict County approved travel routes.

6.0 No Deviation from Permitted Haul Routes. Except as authorized by the Board pursuant to this Agreement, no use of any roads other than those specifically authorized for use in this Agreement is permitted without the prior written amendment of this Agreement.

C. Maintenance Requirements:

1.0 Off-Site Dust Control/Abatement: The Operator is required to provide dust abatement along affected haul route roads, as determined by the County. County will determine the proportionate share of dust control to be paid by Operator. The amount and extent of dust control measures will be determined by site-specific conditions at the time, as determined exclusively by County personnel. The County reserves the right to install traffic counters on the driveway(s) of the Operator's facility. The County will have sole responsibility for determination of the percentage of haul route traffic on all affected roads.

2.0 Obligation to Maintain Current and Future Haul Routes: Operator will be financially responsible for the excavation, repair, and patching of any damage on current or future haul route roads, which in the sole opinion of County has been created by vehicle traffic to and from the Property. Should Operator's site activities or vehicle circulation patterns change in the future so that County approves an alternate haul route, and all or a significant portion of Operator's sourced traffic no longer utilizes the above-described haul route and instead utilizes other portions of County roads, Operator shall cooperate with County in maintenance of said roads which are included within the new haul route. The type and method of repair will be determined by the County Engineer or his representative. Repairs shall commence within 48 hours of notification by the County for any roadway damage that exposes the driving public to adverse or unsafe driving conditions. All other repairs shall commence within thirty (30) days of receipt of Weld County's written notice.

2.1 Need for Immediate Repairs: In the event of damage to an Approved Haul Route by Project traffic that causes an immediate threat to public health and safety or renders the road impassible ("Significant Damage"), County shall, after inspection, notify Operator of such Significant Damage. Operator shall identify the repair required and shall consult with County on the extent, type, timing, materials and quality of repair (i.e. temporary versus permanent) within twenty-four (24) hours after receipt of such notice and shall commence such repair within forty-eight (48) hours after receipt of such notice. If Operator identifies Significant Damage prior to receiving notice thereof from County, Operator may commence repair of such Significant Damage and shall concurrently notify County of the extent, type, timing, materials, and quality of repair (i.e. temporary versus permanent).

2.2 In County's sole discretion, County may undertake the repairs and/or improvements. Operator's payment for its Proportionate Share of the road repairs/improvements will be calculated as described in this Agreement.

3.0 Proportionate Share of Road Maintenance Responsibilities:

3.1 Operator shall pay its Proportionate Share of costs of dust control/abatement, paving, repairs, or maintenance of any particular Haul Route Road. Operator's Proportionate Share shall be based upon the percentage of traffic on the road that is attributable to Operator's facility. County

personnel will determine the percentage based on then current Equivalent Single Axle Load (ESAL) Counts. Operator shall not be responsible for traffic that is not sourced from the Operator's facility.

- 3.2 The County shall notify Operator of County's preliminary determination and assessment of Operator's proportionate share of costs. Prior to County's final determination and assessment, County shall provide Operator with a reasonable opportunity to review, comment upon and supplement County's data, collection methodology, and determinations. The County shall review and consider Operator's input prior to making a final determination and assessment. The County shall have sole responsibility for determination of Operator's proportionate share of costs.

Part II: GENERAL PROVISIONS

A. General Requirements:

1.0 **Permits.** Property Owner is required to apply for, receive, and abide by all permits required by the County or any other applicable local, State, or federal permit, including but not limited to:

- 1.1 **Access Permits:** Property Owner shall not use any access onto any County road unless and until an access permit has been issued by the Department of Public Works. Public Works may condition the issuance of an updated access permit on the amendment of this Agreement if the updated access permit authorizes the use of an additional access point, or if there is a change in use of the current access point, as permitted by Article XIV of Chapter 8 of the Weld County Code.
- 1.2 **Right-of-Way (ROW) Permits:** Per Article XIII of Chapter 8 of the Weld County Code, any work occurring within County ROW requires a ROW permit issued by the Department of Public Works. No work shall occur without said ROW permit.
- 1.3 **Transport Permits:** Per Article XV of Chapter 8 of the Weld County Code, a Weld County Transport Permit is required for Extra-legal vehicles using Weld County roadways to ensure the operation and movement of Extra-legal Vehicles and Loads occurs in a safe and efficient manner.

2.0 **Release of Liability.** Operator shall indemnify and hold harmless the County from any and all liability loss and damage County may suffer as a result of all suits, actions or claims of every nature and description caused by, arising from, or on account of said design and construction of the site specific use associated with TAP21-0004, and pay any and all judgments rendered against the County on account of any such suit, action or claim, together with all reasonable expenses and attorney fees incurred by County in defending such suit, action or claim whether the liability, loss or damage is caused by, or arises out of the negligence of the County or its officers, agents, employees, or otherwise except for the liability, loss, or damage arising from the intentional torts or the gross negligence of the County or its employees while acting within the scope of their employment.

3.0 **Liability for Damage to Road.** Operator shall be financially responsible for any and all damage caused to any Weld County Road as a result of the design and construction of the site specific use associated with TAP21-0004, without regard to the negligence, or lack thereof, of Operator or its agents. This provision shall survive Termination of this Agreement pursuant to section B.2.0, below, and shall be of no further force and effect ten years after mutual execution of this Agreement.

B. Violations of Agreement and Remedies

1.0 **Violation of Terms of Agreement:** If in County's reasonable opinion, Operator has violated any of the terms of this Agreement, County shall so notify Operator and shall state with specificity the facts and circumstances which County believes constitute the violation. Operator shall have thirty (30) days within

which to either cure the violation or demonstrate compliance. Thereafter, County may seek any remedy described in this Agreement or otherwise provided by law.

2.0 Termination of Agreement: This Agreement shall terminate upon the earliest of the following events:

- 2.1 Execution of Replacement Agreement: This Agreement shall terminate following County's execution of a new Road Maintenance Agreement with a new Operator or Operator who has purchased the Property or has assumed the operation of the business permitted by the Access Permit, and intends to make use of the rights and privileges available to it through the then existing Access Permit.
- 2.2 Revocation of Access Permit: This Agreement shall terminate following County's revocation of Operator's Access Permit, except that the Operator shall only be released from this Agreement after the successful completion of all improvements required under this Agreement.
- 2.3 Completion of Construction: This Agreement shall terminate following Operator's completion of construction of the facilities authorized. Operator shall notify the County of completion.

3.0 Revocation of Access Permit: Operator acknowledges that failure to comply with the material terms of this Agreement constitutes cause to revoke the Access Permit, and County may exercise this option in its sole reasonable discretion by proceeding with revocation under the then current provisions of the Weld County Code.

4.0 Court action: Upon notice of violation and failure to cure within the time permitted by this Agreement, County may seek relief in law or equity by filing an action in the Weld District Court.

C. Miscellaneous Provisions.

1.0 Successors and Assigns: This Agreement may not be delegated, transferred, or assigned in whole or in part by Operator without the express written consent of County and the written agreement of the party to whom the obligations under this Agreement are assigned. Operator's release of its obligations shall be accomplished by County's execution of a new Improvements Agreement with the successor owner of the property. Consent to a delegation or an assignment will not be unreasonably withheld or delayed by County. County's rights and obligations under this Agreement shall automatically be delegated, transferred or assigned to any municipality which, by and through annexation proceedings, has assumed jurisdiction and maintenance responsibility over the roads affected by this Agreement. All of the terms and conditions set forth in this Agreement shall be binding upon the heirs, executors, personal representatives, successors and assigns of Operator, and upon recording by the County, shall be deemed a covenant running with the land herein described.

2.0 Governmental Immunity: No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

3.0 No Third Party Beneficiary Enforcement: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties, and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person or entity not included in this Agreement. It is the express intention of the undersigned parties that any person or entity, other than the undersigned parties, receiving services or benefits under this Agreement shall be an incidental beneficiary only.

4.0 Entire Agreement/Modifications: This Agreement including the Exhibits attached hereto and incorporated herein, contains the entire agreement between the parties with respect to the subject matter

contained in this Agreement. This instrument supersedes all prior negotiations, representations, and understandings or agreements with respect to the subject matter contained in this Agreement. This Agreement may be changed or supplemented only by a written instrument signed by both parties.

5.0 Board of County Commissioners of Weld County Approval: This Agreement shall not be valid until it has been approved by the Board of County Commissioners of Weld County, Colorado or its designee.

6.0 Choice of Law/Jurisdiction: Colorado law, and rules and regulations established pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules and/or regulations shall be null and void. In the event of a legal dispute between the parties, Operator agrees that the Weld County District Court shall have exclusive jurisdiction to resolve said dispute.

7.0 Severability: If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the parties.

8.0 Attorney's Fees/Legal Costs: In the event of a dispute between County and Contract Professional, concerning this Agreement, the parties agree that each party shall be responsible for the payment of attorney fees and/or legal costs incurred by or on its own behalf.

9.0 Binding Arbitration Prohibited: Weld County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

10.0 Authority to Sign: Each person signing this Agreement, and associated Exhibits, represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. If requested by the County, Operator shall provide the County with proof of Operator's authority to enter into this Agreement within five (5) days of receiving such request.

OPERATOR: AMES Construction, Inc.

By: [Signature]

Date 4/14/2021

Name: Trent Irick

Title: VICE PRESIDENT

STATE OF COLORADO)

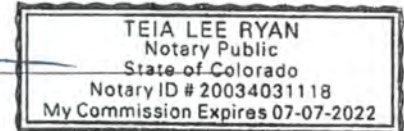
) ss.

County of Weld)

The foregoing instrument was acknowledged before me this 14 day of April,
2021, by Trent Irick

WITNESS my hand and official seal.

Teia Lee Ryan
Notary Public



WELD COUNTY:

ATTEST:
Weld County Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO

BY: _____
Deputy Clerk to the Board

Steve Moreno, Chair

Structure Agreement

This letter has been provided to you as the owner of a structure on or within two hundred (200) feet of a proposed mine site. The State of Colorado, Division of Reclamation, Mining and Safety ("Division") requires that where a mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within two hundred (200) feet of the affected land, the Applicant shall either:

- a) Provide a notarized agreement between the Applicant and the Person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or
- b) Where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- c) Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility. (*Construction Materials Rule 6.3.12 and Rule 6.4.19 & Hard Rock/Metal Mining Rule 6.3.12 and Rule 6.4.20*)

The Colorado Mined Land Reclamation Board ("Board") has determined that this form, if properly executed, represents an agreement that complies with Construction Materials Rule 6.3.12(a), Rule 6.4.19(a), and C.R.S. § 34-32.5-115(4)(e) and with Hard Rock/Metal Mining Rule 6.3.12(a), Rule 6.4.20(a), and C.R.S. § 34-32-115(4)(d). This form is for the sole purpose of ensuring compliance with the Rules and Regulations and shall not make the Board or Division a necessary party to any private civil lawsuit to enforce the terms of the agreement or create any enforcement obligations in the Board or the Division.

The following structures are located on or within 200 feet of the proposed affected area:

1. Underground Fiber Optic Line in County Road 110
2. _____
3. _____
4. _____
5. _____

(Please list additional structures on a separate page)

CERTIFICATION

The Applicant, Ames Construction, Inc. (print applicant/company name),
by Trent Irick (print representative's name), as Executive Vice President (print
representative's title), does hereby certify that Nunn Telephone Company (structure owner) shall
be compensated for any damage from the proposed mining operation to the above listed structure(s)
located on or within 200 feet of the proposed affected area described within Exhibit A, of the Reclamation
Permit Application for Burnham Property Borrow (operation name),
File Number M-____-____.

*This form has been approved by the Colorado Mined Land Reclamation Board pursuant to its
authority under the Colorado Land Reclamation Act for the Extraction of Construction Materials and
the Colorado Mined Land Reclamation Act for Hard Rock, Metal, and Designated Mining Operations.
Any alteration or modification to this form shall result in voiding this form.*

NOTARY FOR PERMIT APPLICANT

ACKNOWLEDGED BY:

Applicant [Signature] Representative Name Trent Irick

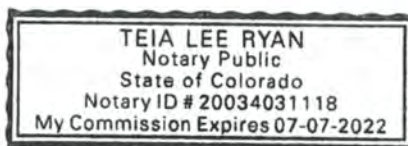
Date 4/9/2021 Title Vice President

STATE OF Colorado)
) ss.

COUNTY OF Arapahoe)

The foregoing was acknowledged before me this 9 day of April, 2021, by
Trent Irick as Vice President of Ames Construction.

Teia Lee Ryan My Commission Expires: 07/07/2022
Notary Public



NOTARY FOR STRUCTURE OWNER

ACKNOWLEDGED BY:

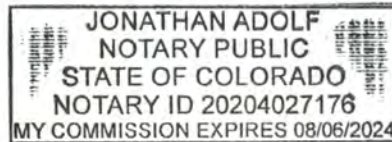
Structure Owner Nunn Telephone Company Name [Signature]

Date 4/02/2021 Title MANAGER

STATE OF Colorado)
) ss.
COUNTY OF Weld)

The foregoing was acknowledged before me this 2nd day of April, 2021, by
Gregory Garabander as Manager of Nunn Telephone Company.

[Signature]
Notary Public My Commission Expires: 8/06/2024



Structure Agreement

This letter has been provided to you as the owner of a structure on or within two hundred (200) feet of a proposed mine site. The State of Colorado, Division of Reclamation, Mining and Safety ("Division") requires that where a mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within two hundred (200) feet of the affected land, the Applicant shall either:

- a) Provide a notarized agreement between the Applicant and the Person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or
- b) Where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- c) Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility. (*Construction Materials Rule 6.3.12 and Rule 6.4.19 & Hard Rock/Metal Mining Rule 6.3.12 and Rule 6.4.20*)

The Colorado Mined Land Reclamation Board ("Board") has determined that this form, if properly executed, represents an agreement that complies with Construction Materials Rule 6.3.12(a), Rule 6.4.19(a), and C.R.S. § 34-32.5-115(4)(e) and with Hard Rock/Metal Mining Rule 6.3.12(a), Rule 6.4.20(a), and C.R.S. § 34-32-115(4)(d). This form is for the sole purpose of ensuring compliance with the Rules and Regulations and shall not make the Board or Division a necessary party to any private civil lawsuit to enforce the terms of the agreement or create any enforcement obligations in the Board or the Division.

The following structures are located on or within 200 feet of the proposed affected area:

- 1. Utility poles (as shown on the attached map) _____
- 2. Overhead electric lines (as shown on the attached map) _____
- 3. _____
- 4. _____
- 5. _____

(Please list additional structures on a separate page)

CERTIFICATION

The Applicant, Ames Construction, Inc. (print applicant/company name),
by Trent Irick (print representative's name), as Regional Vice President (print
representative's title), does hereby certify that Poudre Valley REA (structure owner) shall
be compensated for any damage from the proposed mining operation to the above listed structure(s)
located on or within 200 feet of the proposed affected area described within Exhibit A, of the Reclamation
Permit Application for Burnham Property Borrow (operation name),
File Number M-2021 - 019.

*This form has been approved by the Colorado Mined Land Reclamation Board pursuant to its
authority under the Colorado Land Reclamation Act for the Extraction of Construction Materials and
the Colorado Mined Land Reclamation Act for Hard Rock, Metal, and Designated Mining Operations.
Any alteration or modification to this form shall result in voiding this form.*

NOTARY FOR PERMIT APPLICANT

ACKNOWLEDGED BY:

Applicant Ames Construction, Inc. Representative Name Trent R. Irick

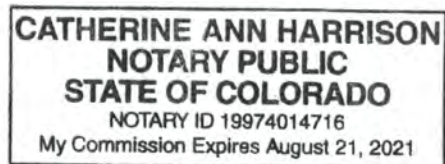
Date 4/1/2021 Title Regional Vice President

STATE OF Colorado)
) ss.

COUNTY OF Adams)

The foregoing was acknowledged before me this 1st day of April, 2021, by
Trent R Irick as Regional Vice President of Ames Construction, Inc.

Catherine Ann Harrison My Commission Expires: 8/21/2021
Notary Public



NOTARY FOR STRUCTURE OWNER

ACKNOWLEDGED BY:

Structure Owner John Bowerfind Name John Bowerfind

Date 3/30/2021 Title Vice President/COO

STATE OF Colorado)
) ss.

COUNTY OF LARIMER)

The foregoing was acknowledged before me this 30 day of MARCH, 2021, by
John Bowerfind as VP/COO of Boudre Valley Rural Electric Assoc., Inc.

Cassandra Hayes My Commission Expires: 05/29/2024
Notary Public

CASSANDRA MARIE HAYES NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20204018925 MY COMMISSION EXPIRES MAY 29, 2024
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