

**ADAMS COUNTY
CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT ("Agreement") is made as of this 30 day of OCTOBER, 2018, by and between the Board of County Commissioners of Adams County, Colorado, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and, Jalisco International, Inc., located at 6663 Colorado Boulevard, Commerce City, CO 80022, hereinafter referred to as the "Contractor."

The County and the Contractor, for the consideration herein set forth, agree as follows:

1. RESPONSIBILITIES/SERVICES OF THE CONTRACTOR

- 1.1. The Contractor shall furnish all of the labor, machinery, equipment, materials, and supplies necessary to perform all of the work shown on the Exhibit A. plans and described in the specifications, and in all other documents incorporated herein by reference, entitled:

RFP No. 2018.627 / Lowell Boulevard Improvements Clear Creek to 62nd Avenue

- 1.2. The Contractor shall perform in accordance with the project scope and provisions of the Solicitation Type, and, in addition to the terms set forth in this Agreement, the Contractor agrees to be bound by and to perform in accordance with the following specified documents attached hereto and incorporated herein as if fully written into this Agreement:

1.2.1. All terms set forth in the RFP/IFB DOCUMENTS attached hereto and identified as: REQUEST FOR PROPOSAL, BID PROPOSAL, BID SCHEDULE, BID BOND, CONSTRUCTION AGREEMENT, PERFORMANCE & PAYMENT BONDS, INSURANCE, BIDDER'S CLIENT LIST, BIDDER'S CREDIT LIST, NOTICE OF AWARD, ACCEPTANCE OF NOTICE OF AWARD, NOTICE TO PROCEED, LETTER OF ACCEPTANCE, APPLICATION FOR EXEMPTION CERTIFICATE, FIELD ORDER, CHANGE ORDER, APPLICATION FOR PAYMENT, PARTIAL WAIVER OF LIEN, FINAL WAIVER OF LIEN, CERTIFICATE OF FINAL COMPLETION, PROJECT DRAWINGS AND ANY SPECIAL DETAILS.

- 1.3. The Contractor agrees that it has satisfied itself as to the nature and location of the work, the character, quality, and quantity of the materials to be encountered, including subsurface conditions, the equipment and facilities needed to complete the work, the local conditions, and all other matters which can affect the work under this Agreement and Contractor assumes the risk should the conditions enumerated in this section differ from what Contractor anticipated.

- 1.4. When required by any document incorporated into this Agreement, certain specified materials shall not be incorporated in the work until tests have been made and the material found to be in accordance with the requirements of the specifications. All costs of initial testing shall be included in the price bid. The Contractor will pay for repeated tests due to failure of initial tests.
- 1.5. This Agreement does not guarantee to the Contractor any work except as authorized in accordance with this Section I, nor does it create an exclusive agreement for services.
- 1.6. The Contractor understands that close cooperation and coordination of this project with all or other contractors or subcontractors is required.
- 1.7. Emergency Services: In the event the Adams County Board of County Commissioners declares an emergency, the County may request additional services (of the type described in this Agreement or otherwise within the expertise of Contractor) to be performed by Contractor. If County requests such additional services, Contractor shall provide such services in a timely fashion given the nature of the emergency, pursuant to the terms of this Agreement. Unless otherwise agreed to in writing by the parties, Contractor shall bill for such services at the rates provided for in this Agreement.

2. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08

- 2.1. Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended 5/13/08, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:
- 2.2. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 2.3. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 2.4. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 2.5. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.

- 2.6. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 2.7. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 2.8. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 2.9. If Contractor violates this Section II of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the County.

3. RESPONSIBILITIES OF THE COUNTY

The County shall:

- 3.1. Provide information as to its requirements for the project.
- 3.2. Give prompt notice to the Contractor whenever the County observes or otherwise becomes aware of any defect in the project.
- 3.3. Provide reasonable assistance to the Contractor in obtaining approval from all governmental authorities having jurisdiction over the project, and such approvals and consents from such other individuals or bodies as may be necessary for completion of the project.
- 3.4. Furnish, or direct the Contractor to provide, at the County's expense, necessary additional services.

4. TERM

- 4.1. Term of Agreement: The work to be performed under this Agreement shall be for 120 Construction Calendar Days.

5. PAYMENT AND FEE SCHEDULE

5.1. The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services, the sum of Three Million Seven Hundred Sixty-one Thousand Eight Hundred Sixty-four Dollars and Thirty Cents (\$3,761,864.30).

5.2. The Contractor shall maintain hourly records of time worked by its personnel to support any audits the County may require, and shall bill the County monthly for costs accrued during the preceding month. Payments on these billings will be subject to estimates prepared by the Project Manager of the value of work performed and materials delivered and materials placed in accordance with the specifications. Upon submission of such billings to the County and approval by the Project Manager, payment shall be issued. It is understood and agreed that the County may require a maximum of thirty-one (31) days to process payment after receiving billing in the proper form.

5.3. The County may deduct money from the partial payments in an amount necessary to protect the interests of the County, and is dependent upon the following:

5.3.1. If the Agreement is for one hundred fifty thousand dollars (\$150,000) or more, the County shall withhold five percent (5%) of monthly partial payments until the contract is completed satisfactorily and finally accepted by the County. For Agreements less than one hundred fifty thousand dollars (\$150,000), the County may withhold more than five percent (5%).

5.3.2. All money withheld pursuant to this section shall be retained by the County no more than thirty (30) days after the project has been completed to satisfaction and has been finally accepted by the County. If the County finds that satisfactory progress is being made in all phases of the Agreement, the County may, upon written request of the Contractor, authorize payment from the withheld percentage. Before such payment is made, the County shall determine that satisfactory and substantial reasons exist for the payment, and shall require written approval from any surety furnishing bonds for the work performed under the terms of this Agreement.

5.4. Fund Availability: The County has appropriated sufficient funds for this Agreement for the current fiscal year. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly. To the extent allowed by the Colorado Taxpayer Bill of Rights and Title 29 of the Colorado Revised Statutes, the County represents that it has appropriated an amount of money for this Agreement that is at least equal to the contract price.

6. LIQUIDATED DAMAGES

- 6.1. The Contractor agrees that time is of the essence in the performance of this Agreement. If the Contractor is delayed for any reason beyond its control, the Contractor shall submit the reason for the delay in writing to the Project Manager who shall decide whether it sufficiently justifies an extension of the completion date.
- 6.2. All decisions of the Project Manager are at his/her complete discretion and will be final.
- 6.3. Time is of the essence in the performance of this Agreement. In the event the Contractor shall fail to complete all the work to be performed by the completion time aforementioned, the Contractor shall pay to the County as and for liquidated damages, not as a penalty, the applicable sum set forth in the schedule below, for each and every calendar day that the Contractor shall be in default. From more than to and including:

Original Contract Amount (\$)		Liquidated Damages per Calendar Day (\$)
From More Than	To And Including	
0	150,000	500
150,000	500,000	1,000
500,000	1,000,000	1,600
1,000,000	2,000,000	2,300
2,000,000	4,000,000	4,100
4,000,000	10,000,000	5,800
10,000,000	----	7,000

- 6.4. Any deduction assessed as liquidated damages under this section shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors on the job or to other projects caused by a failure of the Contractor to complete the work according to the agreed time.
- 6.5. Any extension(s) of the completion date authorized by the Project Manager pursuant to this section shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors on the job. The Contractor agrees to indemnify and hold the County harmless from any claim against the County resulting from the Project Manager authorizing an extension of the completion date or from the Contractor's failure to complete this Agreement by the completion date aforementioned.
- 6.6. Permitting the Contractor to continue and finish the work, or any part thereof, after elapse of the agreed time will not operate as a waiver on the part of the County of any of its rights under this Agreement.

7. DAMAGES ARISING FROM BREACH OF PERFORMANCE OBLIGATIONS

7.1. Notwithstanding anything else set forth in this Agreement, if Contractor fails to comply with all terms of this contract, including but not limited to, its obligation to perform its work in a workmanlike manner in accordance with all codes, plans, specifications and industry standards, Contractor shall be liable to County for all damages arising from the breach, including but not limited to, all attorney fees, costs and other damages.

8. WARRANTY

8.1. The Contractor warrants and guarantees to the County that all work, equipment, and materials furnished under the Agreement are free from defects in workmanship and materials for a period of one year after final acceptance by the County. The Contractor further warrants and guarantees that the plans and specifications incorporated herein are free of fault and defect sufficient for Contractor to warrant the finished product after completion date. Should the Contractor fail to proceed promptly in accordance with this guarantee, the County may have such work performed at the expense of the Contractor. This section does not relieve the Contractor from liability for defects that become known after one year.

9. SUBCONTRACTING

9.1. The Contractor may utilize the services of subcontractors on those parts of the work that would normally be performed by subcontractors. But the Contractor shall not subcontract any portion of the work until the written approval of such action has been obtained from the Project Manager. The Contractor shall be fully responsible to the County for the acts and omissions of its subcontractors and their employees.

10. CHANGE ORDERS OR EXTENSIONS

10.1. The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including but not limited to additional instructions, additional work, and the omission of work previously ordered. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Solicitation, or, if no provision exists, pursuant to the terms of a Change Order. No Change Order shall be issued unless the County has appropriated sufficient funds to pay for the Change Order in the event the amount due pursuant to the Agreement as altered by the Change Order would result in the total contract price exceeding the amount originally appropriated by the County for the Agreement.

10.2. The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

11. INSPECTIONS, REVIEWS AND AUDITS

11.1. When the work is completed, the Contractor shall file a written notice with the Project Manager that the work, in the opinion of the Contractor, has been finished. Within ten (10) days after the Contractor files the written notice, the Project Manager and the Contractor shall make a final inspection of the project to determine whether all of the work has been completed in accordance with this Agreement and with all documents incorporated herein. A final list shall be made by the County, in sufficient detail to fully outline to the Contractor the following items:

- 11.1.1. Work to be completed, if any; and,
- 11.1.2. Work not in compliance with the Agreement, if any; and,
- 11.1.3. Unsatisfactory work for any reason, if any.

11.2. The County shall not authorize final payment until all items on the list, if any, have been completed to the satisfaction of the Project Manager.

12. CLEAN-UP

12.1. The Contractor shall frequently clean up all refuse or scrap materials resulting from the progress of the work. Upon completion of the work and prior to final inspection, the Contractor shall remove from the construction site and occupied adjoining property all refuse, unused materials, forming lumber, sanitary facilities, and any other materials belonging to the Contractor or subcontractors. Failure of the Contractor to clean up and restore the site satisfactorily will result in the County doing so. The cost will be charged to the account of the Contractor or his/her surety.

13. PROJECT ADMINISTRATION

13.1. The Project Manager for this Agreement shall be PM's Jennifer Shi, who can be reached by phone at 720-523-6968. The Project Manager does not have the authority to alter or modify the terms of this Agreement.

13.2. The Project Manager is designated by the County to exercise authority on its behalf under this Agreement, and to see that it is performed according to its terms. The Project Manager shall furnish all explanations or directions and inspections necessary to carry out and complete satisfactorily the services contemplated and provided for under this Agreement. The Project Manager shall also approve all report formats and related procedures, and shall be responsible for final acceptance of all work performed. Any conflict between the plans or specifications, and any other document incorporated herein, shall be submitted in writing to the Project Manager for review and determination.

13.3. If the Contractor considers any work demanded to be outside the Agreement requirements, or considers any determination of the Project Manager to be unfair, the Contractor shall immediately ask for a written instruction or decision from the Project

Manager and shall proceed to perform the services to conform to the Project Manager's determination. If the Contractor considers such instructions or decision to be unsatisfactory, it shall, within five (5) days after their receipt, file a written protest with the Adams County Purchasing Office stating the objections and the reasons therefore. Unless protests or objections are made in the manner specified and within the time limit stated herein, the Contractor hereby waives all grounds for protests.

13.4. All claims, disputes, and other matters in question arising out of or relating to the Agreement documents or breach thereof between the Project Manager and the Contractor shall be submitted to the Adams County Purchasing Office.

14. **NONDISCRIMINATION**

14.1. The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause.

14.1.1. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

15. **INDEPENDENT CONTRACTOR**

15.1. In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his /her acts and the acts of his /her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by State law and personal injury and property damage insurance in the coverage amounts as described in Section XIV. **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

16. **INDEMNIFICATION**

16.1. The Contractor agrees to indemnify and to hold the County and its agents harmless for, from, and against any and all claims, suits, expenses, damages or other liabilities,

including reasonable attorney fees and court costs, arising out of damage or injury to persons or property caused or sustained by any person, persons, or entities as a result of the performance or failure of the Contractor, its agents or employees, or any subcontractor to provide services pursuant to the terms of this Agreement.

17. INSURANCE

17.1. The Contractor shall furnish a certificate of insurance for commercial general liability, comprehensive automobile liability, workers' compensation, and professional liability upon notification of award and prior to performance. Work shall not commence under this Agreement until the Contractor has submitted to the County, and received approval thereof, the certificate of insurance showing compliance with the following types and coverage of insurance.

17.1.1. Commercial General Liability Insurance: to include products liability, completed operations, contractual, broad form property damage, and personal injury.

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

17.1.2. Comprehensive Automobile Liability Insurance: to include all motor vehicles owned, hired, leased, or borrowed.

Bodily Injury/Property Damage	\$1,000,000 (each accident)
Personal Injury Protection	Per Colorado Statutes

17.1.3. Workers' Compensation Insurance: Per Colorado Statutes

17.1.4. Professional Liability Insurance*: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services.

Each Occurrence	\$1,000,000
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*This insurance requirement applies only to Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.

17.2. The Contractor's commercial general liability, comprehensive automobile liability, workers' compensation, and professional liability insurance policies and/or certificates of insurance shall be issued to include Adams County and the Colorado Department of Transportation (CDOT) as an "additional insured" and shall include the following provisions:

17.2.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.

17.2.2. The insurance companies issuing the policy or policies shall have no response against the County for payment of any premiums due or for any assessments under any form of any policy.

17.2.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.

17.3. If any of the said policies shall be or at any time become unsatisfactory to the County as to form or substance, or if a company issuing any such policy shall be or at any time becomes unsatisfactory to the County, the Contractor shall promptly obtain a new policy, submit the same to the Purchasing Agent of Adams County for approval, and thereafter submit a certificate of insurance as herein provided. Upon failure of the Contractor to furnish, deliver, and maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor to obtain and/or maintain any required insurance shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

17.4. If the Contractor is a Joint Venture, then the respective parties thereto are each individually held fully responsible for completion of the project according to the terms of this Agreement. The parties thereto also have joint and several liabilities to the County for any liquidated damages assessed or for performance bond claims against the Joint Venture. The performance bond and all insurance required by this Agreement shall set forth the identity of each party to the Joint Venture.

18. TERMINATION

18.1. Termination of Agreement for the Convenience of the County: The County, at its sole option and discretion, may terminate this Agreement at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least fifteen days before the effective date of termination. If the Agreement is terminated by the County, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement, less payments of compensation previously made.

18.2. Termination of Agreement for Cause: If, through any cause, the Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement upon giving written notice to the Contractor of such termination and specifying the effective date thereof.

18.3. Ownership of Partially Completed Work: All work accomplished by the Contractor prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered.

18.4. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Contractor and for the purposes of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

19. BONDING:

19.1. The Contractor shall secure a Performance Bond and a Payment Bond each in the amount of one hundred percent (100%) of the Agreement price with a corporate surety approved by the County and licensed to do business in the State of Colorado, said bonds to be released at the sole discretion of the County.

20. MUTUAL UNDERSTANDINGS

20.1. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that venue and jurisdiction for disputes regarding performance of this Agreement are with the District Court of Adams County, Colorado.

20.2. Compliance with Laws: The Contractor, at all times during the performance of this Agreement, agrees to strictly adhere to all applicable federal, state, and local laws, rules, and regulations that affect or govern the work as contemplated under this Agreement. If applicable, the Contractor and subcontractors shall abide by all applicable provisions of the Davis-Bacon Act for payment of wages to employees and the Contract Work Hours and Safety Standards Act. The parties hereto aver that they are familiar with §§ 18-3-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and §§ 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, Title 2: Grants and Agreements: Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Subpart F, the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, and that no violation of such provisions are present. Contractor warrants that it is in compliance with the residency requirements in §§ 8-17-101, et seq., C.R.S.

20.3. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized federal, state, or county personnel.

20.4. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Contractor without the prior written consent of the County.

20.5. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require

strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.

- 20.6. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 20.7. Notice: Any notices given under this Agreement are deemed to have been received and to be effective:
- 20.7.1. Three (3) days after the same shall have been mailed by certified mail, return receipt requested; and,
 - 20.7.2. Immediately upon hand delivery; or,
 - 20.7.3. Immediately upon receipt of confirmation that an E-mail was received.
 - 20.7.4. For the purposes of this Agreement, any and all notices should be addressed to the contacts listed below:

Department: Adams County (department name)
Contact: Jennifer Shi
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, CO 80601
Phone: 720.523.6968
E-mail: jshi@adcogov.org

Department: Adams County Purchasing
Contact: Shannon E. Sprague, CPPB
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720.523.6052
E-mail: ssprague@adcogov.org

Department: Adams County Attorney's Office
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720.523.6116

Contractor: Jalisco International, Inc.
Contact: Richard Ledezma
Address: 6663 Colorado Blvd
City, State, Zip: Commerce City, CO 80022
Phone: 303.287.8905
E-mail: rwl@jalisco.org

- 20.8. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.
- 20.9. Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.
- 20.10. Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.
- 20.11. Confidentiality: All documentation related to this Agreement will become the property of Adams County. All documentation maintained or kept by Adams County shall be subject to the Colorado Open Records Act, C.R.S. 24-72-201 *et seq.* ("CORA"). The County does not guarantee the confidentiality of any records.

The remainder of this page is left blank intentionally.

IN WITNESS WHEREOF, the Parties have caused their names to be affixed hereto:

**ADAMS COUNTY COLORADO
BOARD OF COUNTY COMMISSIONERS**

Mary Hodge
Chair

10/30/18
Date

JALISCO INTERNATIONAL, INC.

[Signature]
Signature

Date

Richard Ledezma

President

Printed Name

Title

ATTEST:

Stan Martin, Clerk and Recorder

[Signature]
Deputy Clerk

APPROVED AS TO FORM:

[Signature]
Adams County Attorney's Office

NOTARIZATION OF CONTRACTOR'S SIGNATURE:

COUNTY OF Adams)

STATE OF Colorado)SS.

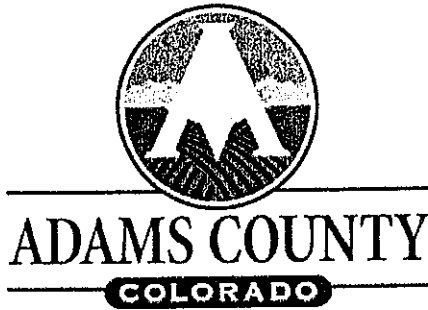
Signed and sworn to before me this 23 day of October, 2018,

by Natalia M. Ledezma Rollins,

[Signature]
Notary Public

My commission expires on: _____

NATALIA MARIE LEDEZMA ROLLINS
Notary Public
State of Colorado
Notary ID # 20174047696
My Commission Expires 11-17-2021



Adams County Finance Department
Purchasing Division
4430 S Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BID 2018.627
CONTRACTOR'S CERTIFICATION
OF COMPLIANCE

Pursuant to Colorado Revised Statute, § 8-17.5-101, *et seq.*, as amended 5/13/08, as a prerequisite to entering into a Agreement for services with Adams County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or Agreement with an illegal alien who will perform work under the attached Agreement for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, *et seq.* in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached Agreement for services.

Jalisco International, Inc.

Contractor Name

Richard Ledezma

Printed or Typed Name

Signature

President

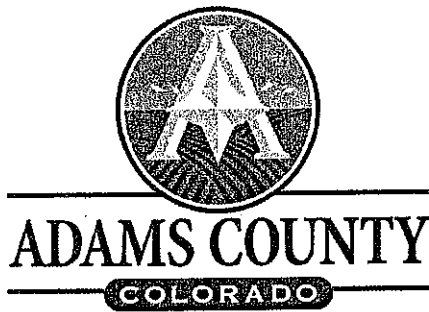
Title

08/02/18

Date

Note: Registration for the E-Verify Program can be completed at: <https://www.vis-dhs.com/employerregistration>. It is recommended that employers review the sample "memorandum of understanding" available at the website prior to registering.

EXHIBIT A



Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BIDS (IFB)
COVER SHEET

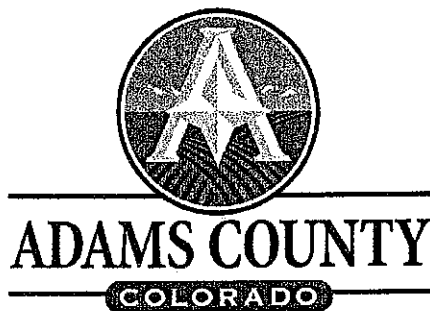
IFB ISSUE DATE: July 11, 2018
IFB NUMBER: 2018.627 ✓
ACCELA NUMBER: IMP2013-00009
PROJECT ID: 30561503
PROJECT TITLE: LOWELL BOULEVARD IMPROVEMENTS
CLEAR CREEK TO 62ND AVENUE
PRE-BID CONFERENCE: July 18, 2018 at 2:00 P.M.
Adams County Government Center
Conference Center– Brantner Gulch A
4430 S. Adams County Parkway, Brighton, CO 80601
(All potential bidders are encouraged to attend.)
QUESTIONS DUE DATE: July 24, 2018
ADDENDUM TO BE ISSUED DATE: July 27, 2018
BID DUE DATE: August 2, 2018, 2:00 P.M.
BID WILL BE RECEIVED AT: Adams County Government Center – Main Lobby
4430 S. Adams County Parkway
Brighton, CO 80601
CONTACT: Shannon E. Sprague, CPPB, Contract Specialist II
720-523-6052
ssprague@adcogov.org

DOCUMENTS IN THIS PACKAGE:

- ✓1) Invitation for Bids
 - Bid Instructions
 - General Terms and Conditions
- ✓2) Bid Proposal
- ✓3) Bid Summary
- ✓4) Bid Bond
- ✓5) Bid Schedules
- 6) Project Specifications
 - Project Special Provisions
 - Standard Special Provisions
- 7) Construction Plans
- ✓8) Submission Check List
- ✓9) Contractor's Certification of Compliance
- ✓10) Contractor's Statement
- ✓11) Reference Form
- 12) Sample Agreement

Attachments

Geotechnical Report
Nationwide Permit 14 Verification
Pipeline License (BNSF)



Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BIDS BID INSTRUCTIONS

1. **PURPOSE/BACKGROUND:** The Adams County Board of County Commissioners by and through its Purchasing Division of the Finance Department is accepting bids for the **Lowell Boulevard Improvements from Clear Creek to 62nd Avenue.**
2. The project consists of widening roadway, installing curbs, gutters, sidewalks, curb ramps, storm sewer infrastructure, retaining wall, guardrail, pedestrian accommodations across the railroads right of ways, lowering water line, signing and striping and other works described on the construction plans on Lowell Boulevard between the north of Clear Creek and 62nd Avenue.
3. The Contractor has **280 calendar days** to finish the project after the "Notice to Proceed" is given. Failure to complete the project by this date, or an extended date approved by the County, will result in liquidated damages being assessed.
4. The Project has funding limits. If the low bid exceeds the budget allocated, the County will adjust the quantities listed in the Bid Schedules to meet the budget and ensure critical areas are completed in this project. No bid unit price adjustment will be allowed after the bid opening, even if quantities are reduced.
5. The only representative of the County with the authority to provide additional information, clarification, or interpretation regarding the specifications, and any other contract documents or requirements is the Contract Specialist.
6. Contract Specialist:
Shannon E. Sprague, CPPB, Contract Specialist II
Adams County Government Center, Finance Department
4430 S. Adams County Parkway, 4th Floor, Suite C4000A
Brighton, CO 80601
Phone: 720-523-6052
Email: ssprague@adcogov.org
7. All documents related to this IFB can be retrieved from the Rocky Mountain Bid System (BidNet) at: <http://www.bidnetdirect.com/colorado/solicitations/open-bids>
 - 7.1. Interested parties must register with this service to receive these documents.
8. It is recommended that bidders on this project review the project site.
9. A Non-Mandatory Pre-Bid Conference will be held on **Wednesday, July 18th, at 2:00 p.m.**, at the

Adams County Government Center, 4430 South Adams County Parkway, Conference Center, Brantner Gulch A, Brighton, CO 80601.

10. Questions must be submitted in writing, via email to: Shannon E. Sprague, Contract Specialist on or before July 24, 2018. Send questions to ssprague@adcogov.org.
11. It is imperative that prospective bidders provide correct email addresses of all individuals desiring to be informed of project announcements.
12. All communications regarding this project shall be clearly marked with the IFB Number and Project Title in the email subject line.
13. Addendums will be posted on BidNet by the Contract Specialist.
14. Responses to Questions will be issued as an Addendum to the Contract.
15. * All IFB submittals shall include the following label directly on the outside of the envelope:

ATTN: Shannon E. Sprague, CPPB, Contract Specialist
IFB-SS-2018.627 / LOWELL BOULEVARD IMPROVEMENTS CLEAR CREEK TO 62ND AVENUE
CONSTRUCTION PROJECT

16. **Two (2) hard copies** of the Bid Proposal; Bid Summary, Bid Schedule(s), and list of proposed subcontractors identifying responsibilities are required. A single hard copy of the original Bid Bond and other supportive documents shall be provided. In addition, Bidder shall submit **Two (2) USB flash drives** each flash drive shall contain PDF scans of all required hard copies and a copy of the Excel file used to print the submitted Bid Schedule.
17. The Bid Summary must be signed.
18. **SUBMISSION OF BIDS:** The bids must be received before the date and time specified in this solicitation. The Contractor is responsible for delivering the envelope containing the bid submittal as indicated below. If the submittal arrives late, it may be discarded. Addresses for submittals as follows:

Mailing Address: Adams County Government Center Purchasing Division 4430 South Adams County Parkway, C4000A Brighton, CO 80601	Hand Deliveries accepted: Adams County Government Center First Floor Main Lobby Receptionist 4430 South Adams County Parkway Brighton, CO 80601
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19. An opening of the bids will follow immediately thereafter. The bids will be opened publicly and read aloud.
20. In submitting a Bid Proposal, bidder agrees that acceptance of any or all bids by the County's Purchasing Agent within a reasonable time or period constitutes a Contract. No delivery shall become due or be accepted unless a purchase order shall first have been issued by the Purchasing Department.

21. BONDING/SURETY REQUIREMENTS:

- 21.1. A 5% Bid Bond is required for Construction Projects over \$50,000 at the time of bid submittal.
- 21.2. Performance and Payment Bonds, each in the amount of 100% of the contract value, will be required at time of contract execution, or as otherwise defined in the Specifications/Scope of Work.
- 21.3. Surety companies executing bonds must appear on the U.S. Treasury Department's most current list (Circular 570) as amended, and be authorized to transact business in the State of Colorado.
- 21.4. A 5% Retainage Fee will be held for Construction contracts over \$150,000.
- 21.5. Liquidated Damages will apply.
- 21.6. Bonds may be submitted on the Standard AIA form.

22. CONTRACTUAL OBLIGATIONS

- 22.1. The successful Contractor will be required to sign an Agreement substantially similar to the Agreement form in Sample Agreement. The County reserves the right to add or delete provisions to the form prior to Agreement execution.
- 22.2. Issuance of this solicitation does not commit the County to award any Agreement or to procure or Agreement contract for any equipment, materials or services.
- 22.3. If a formal Agreement is required, the Contractor agrees and understands that a Notice of Award does not constitute an Agreement or create a property interest of any nature until an Agreement is signed by the Board of County Commissioners and the successful Contractor.
- 22.4. Contractor is responsible for reviewing the form Agreement and understanding the terms and conditions contained therein, including, but not limited to, insurance requirements, indemnification, illegal aliens, equal opportunity, non-appropriation, and termination.
- 22.5. Incorrect Pricing/Invoicing. In the event the County discovers, through its Agreement monitoring process or formal audit process, that material or services were priced/invoiced incorrectly, Contractor agrees to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of the non-compliance.
- 22.6. The County may, during the term of the Agreement and any extensions, request additional work at other locations throughout Adams County by the successful Contractor.

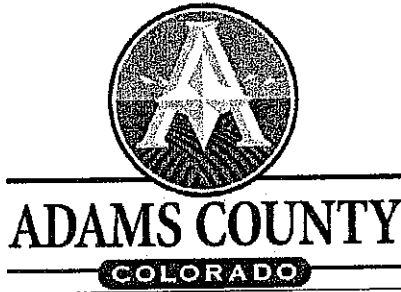
23. METHOD OF AWARD

- 23.1. It is the intent of the County to award an Agreement to the Contractor who provides lowest responsive and responsible bid.

- 24. COOPERATIVE PURCHASING:** Adams County encourages cooperative purchasing in an effort to assist other agencies to reduce their cost of bidding and to make better use of taxpayer dollars through volume purchasing. Contractor(s) may, at their discretion, agree to extend the prices and/or terms of the resulting award to other state or local government agencies, school districts, or political subdivisions in the event they would have a need for the same product/service. Usage by any entity shall not have a negative impact on Adams County in the current term or in any future terms.

25. BUDGET: Budget will not be disclosed.
26. The bidder will not be required to follow the prequalification and bidding procedures contained in the Rules for Prequalification, Debarment, Bidding and Work on Colorado Department of Highways' Road, Highway, and Bridge Public Projects, 2 CCR 601-10, ("Rules"). The County requires the bidders not be listed in the System for Award Management (SAM). <https://www.sam.gov/>
27. As soon as all Bids have been checked compared and evaluated, the County will return the bonds to all Bidders except the three lowest responsible bidders. The lowest responsible bidder will be asked to provide a surety bond and a performance bond and will be provided an Agreement for signature. The Bid Bond (or Certified Check) from the next two lowest responsible bidders will be retained until an Agreement, surety bond, and performance bond have been executed or approved by the County. After such time their Bid Bond (or Certified Check) will be returned.
28. No award will be made to any person, firm, or corporation that is in arrears, or has unresolved violations, upon any obligation to the County.
29. Bidders are invited to be present at the bid opening to make their own tabulation of the bids received or to observe the proceedings.
30. In making copies of the bidding documents available on the above terms, the County does so only for the purpose of obtaining bids on the work and does not confer a license of grant for use.
31. Adams County is an Equal Opportunity Employer.

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Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BIDS GENERAL TERMS AND CONDITIONS

1. **APPLICABILITY:** These General Terms and Conditions apply, but are not limited, to all bids, proposals, qualifications and quotations (hereinafter referred to as "Bid" or "Response") made to Adams County (hereinafter referred to as "County") by all prospective Contractors, bidders, firms, companies, publishers, consultants, or suppliers (herein after referred to as "Contractor" or "Contractors") in response, but not limited, to all Invitations for Bids, Requests for Proposals, Requests for Qualifications, and Requests for Quotations (hereinafter referred to as "Solicitation" or "Solicitations").
2. **CONTENTS OF BIDS**
 - 2.1. **GENERAL CONDITIONS:** Contractors are required to submit their Bids in accordance with the following expressed conditions:
 - 2.1.1. Contractors shall make all investigations necessary to thoroughly inform themselves regarding the plant and facilities affected by the delivery of materials and equipment as required by the conditions of the Solicitation. No plea of ignorance by the Contractor of conditions that exist or that may hereafter exist will be accepted as the basis for varying the requirements of the County or the compensation to the Contractor.
 - 2.1.2. Contractors are advised that all County Solicitations and Agreements are subject to all requirements contained in the County's Purchasing Division's Policies and state and federal statutes. When conflicts occur, the County's legal interpretation will prevail.
 - 2.1.3. Contractors are required to state exactly what they intend to furnish to the County in their Bid and must indicate any variances to the terms, conditions, and specifications of this Solicitation no matter how slight. If variations are not stated in a Contractor's Bid, it shall be construed that the Contractor's Bid fully complies with all conditions identified in this Solicitation.
3. The County intends and expects that the Contracting processes of the County and its Contractors provide equal opportunity without regard to gender, race, ethnicity, religion, age or disability and that its Contractors make available equal opportunities to the extent third parties are engaged to provide goods and services to the County as Subcontractors, Contractors, or otherwise. Accordingly, the Contractor shall not discriminate on any of the foregoing grounds in the performance of any Agreement awarded to the Contractor, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of the Agreement. If submitting a joint venture bid, or a bid involving a partnership arrangement, articles of partnership stating each partner's responsibilities shall be furnished and submitted with the Bid Response.
4. All documentation submitted in response to this solicitation will become the property of Adams County. All documentation maintained or kept by Adams County shall be subject to the Colorado

Open Records Act. C.R.S. 24-72-201 et. seq. ("CORA"). Accordingly, respondents are discouraged from providing information that they consider confidential, privileged, and/or trade secrets as part of a response to this solicitation. Any portions of submissions that are reasonably considered confidential should be clearly marked. The County does not guarantee the confidentiality of any records.

Careful consideration should be given before submitting confidential information to the County. The Colorado Open Records Act permits public scrutiny of most materials collected in this Solicitation process. Information that is reasonably considered proprietary should be clearly marked as confidential.

5. CLARIFICATION AND MODIFICATIONS IN TERMS AND CONDITIONS

5.1. Where there appears to be variances or conflicts between the General Terms and Conditions, any Special Terms and Conditions and the Scope of Work/Specifications outlined in this Solicitation, the County's interpretation will prevail.

5.1.1. If any Contractor contemplating submitting a Bid under this Solicitation is in doubt as to the true meaning of the Specifications or any other portion of the Solicitation, the Contractor must submit a written request via email for clarification to the Point of Contact listed on the first page of this Solicitation. The Contractor submitting the request shall be responsible for ensuring that the request is received by the County prior to the deadline for submitting questions.

5.1.2. The County shall issue a written addendum if substantial changes which impact the technical submission of Bids are required. A copy of such addenda will be available at the Rocky Mountain E-Purchasing System (BIDNET) website. In the event of conflict with the original Solicitation documents, addenda shall supersede to the extent specified. Subsequent addenda shall supersede prior addenda to the extent specified.

5.1.3. **ADDENDA: CONTRACTOR IS RESPONSIBLE FOR OBTAINING AND ACKNOWLEDGING ALL SUBSEQUENT ADDENDA VIA THE ROCKY MOUNTAIN E-PURCHASING SYSTEM (BIDNET). FAILURE TO ACKNOWLEDGE ANY AND ALL SUBSEQUENT ADDENDUM/ADDENDA MAY DEEM THE CONTRACTOR NON-RESPONSIVE. EACH AND EVERY ADDENDUM SHALL BE ACKNOWLEDGED SEPARATELY.**

5.2. PRICES CONTAINED IN SUBMITTAL – DISCOUNTS, TAXES

5.2.1. Contractors shall not include federal, state, or local excise or sales taxes in prices offered, as the County is exempt from payment of such taxes.

5.2.1.1. Federal Identification Number: 84-6000732

5.2.1.2. State of Colorado Tax Exempt Number: 98-03569

6. SIGNING BID

6.1. Contractor, by affixing its signature to this Solicitation, certifies that its Bid is made without previous understanding, agreement, or connection either with any persons, firms or corporations making a Bid for the same items, or with the County. The Contractor also certifies that its Bid is in all respects fair, without outside control, collusion, fraud, or

otherwise illegal action. To insure integrity of the County's public procurement process, all Contractors are hereby placed on notice that any and all Contractors who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.

7. PREPARATION AND SUBMISSION OF BID

7.1. PREPARATION

- 7.1.1. The Bid must be typed or legibly printed in ink. The use of erasable ink is not permitted. All corrections made by the Contractor must be initialed by the authorized agent of the Contractor.
- 7.1.2. Bids must contain a manual signature of an authorized agent of the Contractor in the space provided on the Solicitation cover page. The original cover page of this Solicitation must be included in all Bid responses. If the Contractor's authorized agent fails to sign and return the Contractor's Statement of the Solicitation, its Bid may be invalid and may be considered non-responsive.
- 7.1.3. Unit prices shall be provided by the Contractor on the Bid Schedules provided by the County. Prices that are not in accordance with the measurements and descriptions requested may be considered non-responsive. Where there is a discrepancy between the unit price and the extension of prices, the unit price shall prevail.
- 7.1.4. Alternate Bids will not be considered unless expressly permitted in the Specifications/Scope of Work.
- 7.1.5. The accuracy of the Bid is the sole responsibility of the Contractor. No changes in the Bid shall be allowed after the date and time that submission of the Bid is due.

7.2. SUBMISSION

- 7.2.1. The Bid shall be sealed in an envelope with the Contractor's name and the Solicitation number on the outside. The County's Bid Schedules, which is attached to this Solicitation, must be used when the Contractor is submitting its Bid. The Contractor shall not alter the Bid Schedule. Only sealed Bids received by the County will be accepted; All Bids submitted via telephone, email, or facsimile machines will be discarded.
- 7.2.2. Each Bid must be submitted at the time and place, with the number of copies as specified in this Solicitation. Failure to submit the required number of copies may deem the Bid non-responsive.
- 7.2.3. Failure to provide any requested information may result in the rejection of the Bid as non-responsive.
- 7.2.4. Bid must be submitted in the format supplied and/or described by the County. Failure to submit in the format provided may be cause for rejection of the Bid. Bids must be furnished exclusive of taxes.
- 7.2.5. Contractor is responsible for ensuring their Bid is received by the Purchasing Division prior to the deadline outlined in the solicitation regardless of the method of delivery.
- 7.2.6. Contractors, The County reserves the right to declare a Bid as non-responsive if any of these alternate terms and conditions is in conflict with the County's terms and conditions, or if they are not in the best interests of the County.

8. LATE BIDS

- 8.1. Bids received after the date and time set for the opening shall be considered non-responsive and may be discarded, or returned unopened to the Contractor.
- 8.2. The County assumes no responsibility for late deliveries of mail on behalf of the United States Post Office or any other delivery system.
- 8.3. The County assumes no responsibility for a Bid being either opened early or improperly routed if the envelope is not clearly marked on the outside: IFB-SS-2018.627/ LOWELL BOULEVARD IMPROVEMENTS CLEAR CREEK TO 62ND AVENUE CONSTRUCTION PROJECT .
- 8.4. In the event of a situation severe enough to cause the Adams County Board of Commissioners to close the County offices for any reason, the County has the prerogative of rescheduling the Bid opening time and date. No Bid will be considered above all other Bids by having met the Bid opening time and date requirements to the exclusion of those who were unable to present their Bid due to a situation severe enough to cause the County to close County offices.

9. MODIFICATIONS/WITHDRAWAL OF BIDS

- 9.1. MODIFICATIONS TO BIDS. Bids may only be modified in the form of a written notice on Contractor letterhead and must be received prior to the time and date set for the Proposals to be opened. Each modification submitted to the Contract Specialist must have the Contractor's name and return address and the applicable Solicitation number and title clearly marked on the face of the sealed envelope. If more than one modification is submitted, the modification bearing the latest date of receipt by the Contract Specialist will be considered the valid modification.
- 9.2. WITHDRAWAL OF BIDS
 - 9.2.1. Bids may be withdrawn in the form of a written notice on Contractor letterhead and must be received prior to the time and date set for the opening of Bids. Any withdrawal of a Bid submitted to the Contract Specialist must have the Contractor's name, return address, and the applicable Solicitation number and title clearly marked on the face of the envelope and on the withdrawal letter.
 - 9.2.2. Bids may not be withdrawn after the time and date set for the opening for a period of one-hundred twenty calendar days. If a Bid is withdrawn by the Contractor during this one-hundred twenty -day period, the County may, at its option, suspend the Contractor and may not accept any Bid from the Contractor for a six-month period following the withdrawal.

10. REJECTION OF BIDS

- 10.1. REJECTION OF BIDS. The County may, at its sole and absolute discretion:
 - 10.1.1. Reject any and all, or parts of any or all, Bids submitted by prospective Contractors;
 - 10.1.2. Re-advertise this Solicitation;
 - 10.1.3. Postpone or cancel the process;

- 10.1.4. Waive any irregularities in the Bids received in conjunction with this Solicitation; and/or
- 10.2. REJECTION OF A PARTICULAR BID. In addition to any reason identified above, the County may reject a Bid under any of the following conditions:
 - 10.2.1. The Contractor misstates or conceals any material fact in its Bid Response;
 - 10.2.2. The Contractor's Bid does not strictly conform to the law or the requirements of the Solicitation;
 - 10.2.3. The Bid expressly requires or implies a conditional award that conflicts with the method of award stipulated in the Solicitation;
 - 10.2.4. The Bid does not include documents, including, but not limited to, certificates, licenses, and/or samples, which are required for submission with the Bid in accordance with the Solicitation;
 - 10.2.5. The Bid has not been executed by the Contractor through an authorized signature on the Contractor's Statement; and or
- 10.3. The County reserves the right to waive any irregularities or informalities, and the right to accept or reject any and all bids.

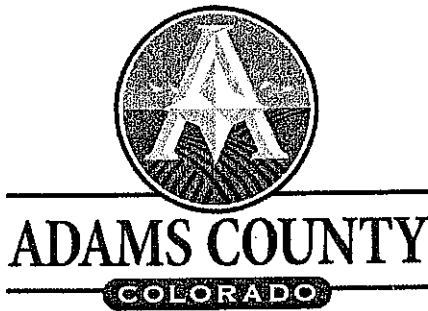
11. ELIMINATION FROM CONSIDERATION

- 11.1. A Bid may not be accepted from, nor any Agreement be awarded to, any person or firm which is in arrears to the County upon any debt or Agreement or which is a defaulter as surety or otherwise upon any obligation to the County.
- 11.2. A Bid may not be accepted from, nor any Agreement awarded to, any person or firm who has failed to perform faithfully any previous Agreement with the County or other governmental entity, for a minimum period of three years after the previous Agreement was terminated for cause.
- 11.3. Any communications in regards to this Solicitation must go through the Contract Specialist. Any contact with other County personnel or County Contractors may be cause for disqualification.
- 11.4. No damages shall be recoverable by any challenger as a result of the determinations listed in this Section or decisions by the County.
- 11.5. The Board of County Commissioners may rescind the award of any Bid within one week thereof or at its next regularly scheduled meeting; whichever is later, when the public interest will be served thereby.

- 12. **QUALIFICATIONS OF CONTRACTOR:** The County may make such investigations as deemed necessary to determine the ability of the Contractor to perform work, and the Contractor shall furnish all information and data for this purpose as the County requests. Such information includes, but is not limited to: current/maximum bonding capabilities, current licensing information, audited financial statements, history of the firm on assessments of liquidated damages, Agreements cancelled prior to completion and/or lawsuits and/or pending lawsuits against the firm and/or its principals. The County reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Contractor fails to satisfy the County that such Contractor is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein.

13. AWARD OF SOLICITATION. The County may award this Solicitation to the successful Contractor through the issuance of a Notice of Intent to Award. All Contractors that participated in the Solicitation process will be notified of Contractor selection. No services or goods shall be provided, and no compensation shall be paid, until and unless an Agreement has been signed by an authorized representative of the County and the Contractor.

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Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

BID PROPOSAL

LOWELL BOULEVARD IMPROVEMENTS CLEAR CREEK TO 62ND AVENUE

Proposal of Jalisco International, Inc. (hereinafter called Bidder),

organized and existing under the laws of the State of Colorado, doing
business as

(an) (a) corporation. * (Insert "corporation, partnership, individual", as
applicable)

To the Owner:

In accordance with the advertisement of Adams County inviting bid proposals for the **2018.627 Lowell Boulevard Improvements Clear Creek to 62nd Avenue (Project)** herein before named, and in conformity with the Contract Plans, Contract Documents, Specifications, and Special Provisions and all Addenda pertaining thereto, all on file at the County.

The County's Contract Specialist for this project is identified in the Invitation to Bid.

Bidder hereby certifies that this proposal is made and submitted without fraud or collusion with any other person, firm or corporation whatsoever; that an examination has been made of the site, of the work, and Contract form, together with the Plans, Specifications, and Special Provisions for the construction of the above named Project.

Bidder understands that the quantities of work shown herein are approximations and are subject to be increased or decreased; that all quantities of work, whether increased or decreased within the limits specified in the Contract, are to be performed at the unit prices or lump sums as shown on the attached schedule; that at the time of opening bids, a total bid only will be read, but that a comparison of bids will be based on the correct summation of item totals obtained from the unit prices or lump sum totals bid as provided in Section 102 Bidding Requirements and Conditions of the Project Specifications.

Bidder proposes to furnish all necessary machinery, equipment, tools, labor, and other means of construction, and to furnish all materials specified in the manner and at the time prescribed, all in accordance with the terms of the Contract Documents, Plans, Specifications, and the Special Provisions forming apart thereof.

Bidder further proposes to execute the form of Agreement and provide the required Bonds within 10 days after receiving written Notice of Intent to Award.

Bidder further proposes to perform all work in accordance with the Contract Documents, Plans, Specifications, Standard Special Provisions, and Project Special Provisions and in a good and workmanlike manner, and to renew or repair any work which may be rejected due to defective materials or workmanship, prior to final completion and acceptance by the County.

Bidder hereby agrees to commence work under this contract upon Receipt of Notice to Proceed and to fully complete the project within **280 calendar days** after notice to proceed. Failure to complete the project by this date, or an extended date approved by the County, will result in liquidated damages being assessed.

NOTICE CONCERNING BID

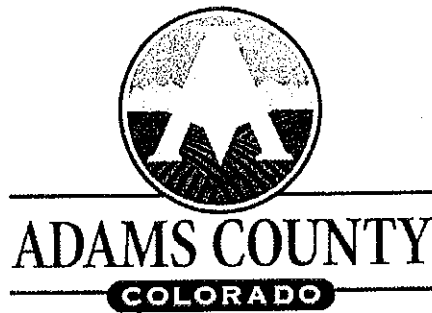
BIDDERS must use correct Bid forms. Failure to use the correct Bid forms shall cause rejection of the bid.

Bids may be considered non-responsive if they do not include bids for all of the items listed in the Bid Schedules.

The quantities listed in the Bid Schedule are estimates only, and indicate relative amount of anticipated work.

The total amount of the Project (Total) shall be restated on the Bid Summary.

Unless otherwise noted, all bid items are considered complete in place and removal bid quantities include haul and proper material disposal.



Adams County Finance Department
Purchasing Division
4430 S Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BID 2018.627
CONTRACTOR'S STATEMENT

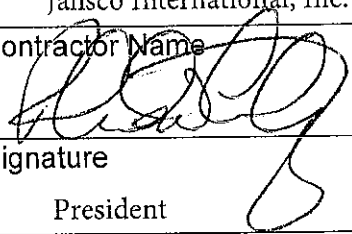
I have read and fully understand all the conditions herein set forth in the foregoing paragraphs, and by my signature set forth hereunder, I hereby agree to comply with all said conditions as stated or implied. In consideration of the above statement, the following Bid is hereby submitted.

If any of the documents listed on the cover page are missing from this package, contact Adams County Purchasing. If you require additional information, call the Purchasing Division contact person.

The undersigned hereby affirms that (1) he/she is a duly authorized agent of the Contractor, (2) he/she has read all terms and conditions and technical specifications which were made available in conjunction with this solicitation and fully understands and accepts them unless specific variations have been expressly listed in his/her Bid, (3) the Bid is being submitted on behalf of the Contractor in accordance with any terms and conditions set forth in this Solicitation, and (4) the Contractor will accept any awards made to it as a result of the Bid submitted herein for a minimum of 120 calendar days following the date of submission.

WE, THE UNDERSIGNED, HEREBY ACKNOWLEDGE RECEIPT OF

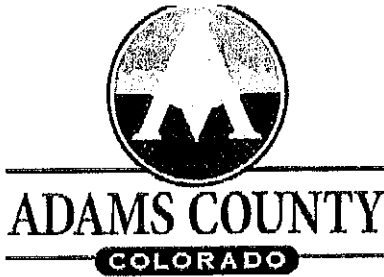
Addenda (list all): 1

Jalisco International, Inc.	08/02/18
Contractor Name	Date
	Richard Ledezma
Signature	Printed Name
President	
Title	
6663 Colorado Blvd.	
Address	
Commerce City, CO 80022	Adams
City, State, Zip Code	County
303-287-8905	303-287-0511
Telephone	Fax
rw1@jalisco.org	
Email	

BID SCHEDULES
 LOWELL BOULEVARD IMPROVEMENTS CLEAR CREE TO 62ND AVENUE
 ADAMS COUNTY PROJECT; IMP 2013-00009
 Revised: 07/26/2018
 BID SUBMITTED BY:
 BID OPENING DATE: 08/01/2018

Item Line No.	Contract Item No.	Contract Item Description	Unit	Schedule A	Schedule B	Total Quantity	Unit Cost	Total Cost
				Quantity	Quantity			
1	201-00000	CLEARING AND GRUBBING	LS	1.00		1.00	\$110,000.00	\$110,000.00
2	202-00001	REMOVAL OF STRUCTURE	EACH	1.00		1.00	\$27,750.00	\$27,750.00
3	202-00010	REMOVAL OF TREE	EACH	9.00		9.00	\$1,070.00	\$9,630.00
4	202-00019	REMOVAL OF INLET	EACH	2.00		2.00	\$1,150.00	\$2,300.00
5	202-00035	REMOVAL OF PIPE	LF	430.00		430.00	\$29.00	\$12,470.00
6	202-00203	REMOVAL OF CURB AND GUTTER	LF	32.00		32.00	\$13.75	\$440.00
7	202-00206	REMOVAL OF CONCRETE CURB RAMP	SY	40.00		40.00	\$33.00	\$1,320.00
8	202-00220	REMOVAL OF ASPHALT MAT	SY	3168.00		3168.00	\$17.50	\$55,440.00
9	202-00246	REMOVAL OF ASPHALT MAT (PLANING) (SPECIAL)	SY	6272.00		6272.00	\$3.50	\$21,952.00
10	202-00300	REMOVAL OF BUILDING	LS	1.00		1.00	\$26,300.00	\$26,300.00
11	202-003001	REMOVAL OF SEPTIC TANK	EACH	2.00		2.00	\$4,250.00	\$8,500.00
12	202-00810	REMOVAL OF GROUND SIGN	EACH	22.00		22.00	\$275.00	\$6,050.00
13	202-01000	REMOVAL OF FENCE	LF	355.00		355.00	\$7.00	\$2,485.00
14	202-01035	REMOVAL OF GATE	EACH	2.00		2.00	\$175.00	\$350.00
15	202-01130	REMOVAL OF GUARDRAIL TYPE 3	LF	150.00		150.00	\$12.50	\$1,875.00
16	202-06000	REMOVAL OF DETOUR	LS	1.00		1.00	\$23,000.00	\$23,000.00
17	203-00010	UNCLASSIFIED EXCAVATION (COMPLETE IN PLACE)	CY	4422.00		4422.00	\$21.00	\$92,862.00
18	203-00080	EMBANKMENT MATERIAL (COMPLETE IN PLACE)	CY	2304.00		2304.00	\$29.00	\$66,816.00
19	203-00100	MUCK EXCAVATION	CY	100.00		100.00	\$66.00	\$6,600.00
20	208-00100	STRUCTURAL BACKFILL (CLASS 1)	CY	546.00		546.00	\$49.00	\$26,754.00
21	208-00520	FILTER MATERIAL (CLASS B)	CY	13.00		13.00	\$67.00	\$871.00
22	207-00205	TOPSOIL	CY	883.00		883.00	\$26.00	\$22,958.00
23	208-00002	EROSION LOG TYPE 2 (12 INCH)	LF	2171.00		2171.00	\$8.20	\$17,802.20
24	208-00020	SILT FENCE	LF	8310.00		8310.00	\$1.85	\$15,373.50
25	208-00035	AGGREGATE BAG	LF	360.00		360.00	\$8.50	\$3,060.00
26	208-00045	CONCRETE WASHOUT STRUCTURE	EACH	2.00		2.00	\$1,900.00	\$3,800.00
27	208-00051	STORM DRAIN INLET PROTECTION (TYPE 1)	LF	434.00		434.00	\$9.50	\$4,123.00
28	208-00070	VEHICLE TRACKING PAD	EACH	1.00		1.00	\$2,150.00	\$2,150.00
29	208-00103	REMOVAL AND DISPOSAL OF SEDIMENT (LABOR)	HOUR	40.00		40.00	\$62.00	\$2,480.00
30	208-00105	REMOVAL AND DISPOSAL OF SEDIMENT (EQUIPMENT)	HOUR	40.00		40.00	\$100.00	\$4,000.00
31	208-00108	SWEEPING (SEDIMENT REMOVAL)	HOUR	40.00		40.00	\$170.00	\$6,800.00
32	208-00205	EROSION CONTROL SUPERVISOR	HOUR	500.00		500.00	\$93.00	\$46,500.00
33	210-00001	REST STRUCTURE	EACH	3.00		3.00	\$1,600.00	\$4,800.00
34	210-00010	RESET MAILBOX STRUCTURE	EACH	6.00		6.00	\$245.00	\$1,470.00
35	210-00030	RESET WATER SERVICE	EACH	2.00		2.00	\$1,080.00	\$2,160.00
36	210-00040	RESET WATER LINE	EACH		4.00	4.00	\$8,100.00	\$32,400.00
37	210-00085	RESET MONUMENT (TYPE 3A)	EACH	1.00		1.00	\$1,600.00	\$1,600.00
38	210-00861	RESET WIRING	LS	1.00		1.00	\$5,350.00	\$5,350.00
39	210-01000	REST FENCE	LF	40.00		40.00	\$48.00	\$1,920.00
40	210-01011	RESET GATE	EACH	6.00		6.00	\$330.00	\$1,980.00
41	210-02008	RELAY PIPE (6 INCH)	LF	26.00		26.00	\$64.00	\$1,664.00
42	210-04050	ADJUST VALVE BOX	EACH		9.00	9.00	\$410.00	\$3,690.00
43	212-00006	SEEDING (NATIVE)	ACRE	1.84		1.84	\$6,600.00	\$10,824.00
44	213-00004	MULCHING (WEED FREE STRAW)	ACRE	1.50		1.50	\$785.00	\$1,177.50
45	213-00051	MULCH TACKIFIER	LB	150.00		150.00	\$5.50	\$825.00
46	218-00039	SOIL RETENTION BLANKET (STRAW)	SY	675.00		675.00	\$2.50	\$1,687.50
47	304-06000	AGGREGATE BASE COURSE (CLASS B)	TON	352.00		352.00	\$24.80	\$8,729.60
48	304-09006	AGGREGATE BASE COURSE (SPECIAL)	SY	210.00		210.00	\$15.00	\$3,150.00
49	308-00000	RECONDITIONING	SY	6163.00		6163.00	\$3.50	\$21,570.50
50	403-00720	HOT MIX ASPHALT (PATCHING) (ASPHALT)	TON	648.00		648.00	\$163.00	\$105,784.00
51	403-33741	HOT MIX ASPHALT (GRADING S) (75) (PG 64-22)	TON	2208.00		2208.00	\$67.00	\$147,936.00
52	403-34741	HOT MIX ASPHALT (GRADING SX) (75) (PG 64-22)	TON	1332.00		1332.00	\$78.00	\$103,896.00
53	403-36741	HOT MIX ASPHALT (GRADING ST) (75) (PG 64-22)	TON	252.00		252.00	\$105.00	\$26,460.00
54	412-00805	CONCRETE PAVEMENT (8 INCH) (FAST TRACK)	SY	201.00		201.00	\$105.00	\$21,105.00
55	412-00805	CONCRETE PAVEMENT (8 INCH) (FAST TRACK)	SY	346.00		346.00	\$108.00	\$37,368.00
56	420-00134	GEOTEXTILE (DRAINAGE) (CLASS 3)	SY	147.00		147.00	\$3.75	\$551.25
57	508-00206	RIPRAP (8 INCH)	CY	3.70		3.70	\$165.00	\$610.50
58	508-00212	RIPRAP (12 INCH)	CY	40.00		40.00	\$105.00	\$4,200.00
59	506-00408	SOIL RIPRAP (6 INCH)	CY	34.20		34.20	\$120.00	\$4,104.00
60	507-00000	CONCRETE SLOPE AND DITCH PAVING	CY	171.00		171.00	\$540.00	\$92,340.00
61	601-03050	CONCRETE CLASS D (WALL)	CY	203.00		203.00	\$715.00	\$145,145.00
62	601-40400	STRUCTURAL CONCRETE STAIN	SY	300.00		300.00	\$21.00	\$6,300.00
63	602-00000	REINFORCING STEEL	LB	57624.00		57624.00	\$1.15	\$66,267.60
64	603-01185	18 INCH REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	LF	1548.00		1548.00	\$73.00	\$112,884.00
65	603-01245	24 INCH REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	LF	879.00		879.00	\$120.00	\$105,480.00
66	603-01305	30 INCH REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	LF	347.00		347.00	\$120.00	\$41,640.00

Line No.	Item No.	Description	Unit	Quantity	Quantity	Quantity	Unit Cost	Total Cost
67	603-01425	42 INCH REINFORCED CONCRETE PIPE (COMPLETE IN PLACE)	LF	99.00		99.00	\$205.00	\$20,295.00
68	603-06018	18 INCH REINFORCED CONCRETE END SECTION	EACH	5.00		5.00	\$2,400.00	\$12,000.00
69	603-06024	24 INCH REINFORCED CONCRETE END SECTION	EACH	2.00		2.00	\$2,600.00	\$5,200.00
70	603-06042	42 INCH REINFORCED CONCRETE END SECTION	EACH	2.00		2.00	\$4,200.00	\$8,400.00
71	603-60008	8 INCH PLASTIC PIPE	LF	18.00		18.00	\$70.00	\$1,260.00
72	603-60010	10 INCH PLASTIC PIPE	LF	5.00		5.00	\$75.00	\$375.00
73	604-00305	INLET TYPE C (5 FOOT)	EACH	3.00		3.00	\$3,925.00	\$11,775.00
74	604-19105	INLET TYPE R L5 (5 FOOT)	EACH	4.00		4.00	\$4,925.00	\$19,700.00
75	604-19110	INLET TYPE R L5 (10 FOOT)	EACH	5.00		5.00	\$5,675.00	\$28,375.00
76	604-31005	MANHOLE SLAB BASE (6 FOOT)	EACH	1.00		1.00	\$8,165.00	\$8,165.00
77	604-30010	MANHOLE SLAB BASE (10 FOOT)	EACH	2.00		2.00	\$4,620.00	\$9,240.00
78	604-31010	MANHOLE BOX BASE (10 FOOT)	EACH	5.00		5.00	\$8,280.00	\$41,450.00
79	604-31015	MANHOLE BOX BASE (15 FOOT)	EACH	2.00		2.00	\$11,111.00	\$22,222.00
80	604-39000	MANHOLE SPECIAL	EACH	2.00		2.00	\$24,000.00	\$48,000.00
81	606-00301	GUARDRAIL TYPE 3 (6-3 POST SPACING)	LF	125.00		125.00	\$44.00	\$5,500.00
82	606-01380	TRANSITION TYPE 3H	EACH	1.00		1.00	\$1,485.00	\$1,485.00
83	606-01390	END ANCHORAGE (TYPE 3K)	EACH	2.00		2.00	\$2,100.00	\$4,200.00
84	606-02003	END ANCHORAGE (NONFLARED)	EACH	1.00		1.00	\$3,200.00	\$3,200.00
85	606-11025	BRIDGE RAIL TYPE 10H (SPECIAL)	LF	330.00		330.00	\$270.00	\$89,100.00
86	607-11625	FENCE (PLASTIC)	LF	1753.00		1753.00	\$2.85	\$4,986.05
87	607-53142	FENCE CHAIN LINK (42 INCH)	LF	169.00		169.00	\$31.00	\$5,239.00
88	607-60270	20 FOOT GATE DOUBLE (CHAIN LINK)	EACH	1.00		1.00	\$915.00	\$915.00
89	608-00000	CONCRETE SIDEWALK	SY	428.00		428.00	\$60.00	\$25,680.00
90	608-00010	CONCRETE CURB RAMP	SY	57.00		57.00	\$130.00	\$7,410.00
91	608-00015	DETECTABLE WARNINGS	SF	80.00		80.00	\$48.00	\$3,840.00
92	608-10010	SIDEWALK DRAIN	EACH	1.00		1.00	\$1,650.00	\$1,650.00
93	609-21020	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	188.00		188.00	\$31.50	\$5,922.00
94	609-22022	CURB, GUTTER AND SIDEWALK TYPE 2 (SECTION II-B)	SY	4733.00		4733.00	\$50.00	\$236,650.00
95	609-24004	GUTTER TYPE 2 (4 FOOT)	LF	259.00		259.00	\$33.50	\$8,676.50
96	609-24008	GUTTER TYPE 2 (8 FOOT)	LF	76.00		76.00	\$63.00	\$4,828.00
97	614-00011	SIGN PANEL (CLASS 1)	SF	82.00		82.00	\$67.00	\$5,534.00
98	614-00216	STEEL SIGN POST (2X2 INCH TUBING)	LF	169.00		169.00	\$46.00	\$7,774.00
99	614-01738	STEEL SIGN GROUND STUD BASE (36 INCH)	EACH	18.00		18.00	\$310.00	\$5,580.00
100	616-30018	18 INCH TRASH GUARD	EACH	3.00		3.00	\$1,015.00	\$3,045.00
101	616-30024	24 INCH TRASH GUARD	EACH	2.00		2.00	\$1,100.00	\$2,200.00
102	616-30042	42 INCH TRASH GUARD	EACH	2.00		2.00	\$2,125.00	\$4,250.00
103	619-10060	6 INCH WELDED STEEL PIPE	LF	28.00		28.00	\$85.00	\$2,380.00
104	620-00001	FIELD OFFICE (SPECIAL)	EACH	1.00		1.00	\$28,000.00	\$28,000.00
105	620-00020	SANITARY FACILITY	EACH	2.00		2.00	\$1,800.00	\$3,600.00
106	621-00450	DETOUR PAVEMENT	SY	1498.00		1498.00	\$40.00	\$59,920.00
107	625-00000	CONSTRUCTION SURVEYING	LS	0.85	0.15	1.00	\$50,000.00	\$50,000.00
108	625-00001	CONSTRUCTION SURVEYING	HOURL	60.00		60.00	\$175.00	\$10,500.00



Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, Jalisco International, Inc.
6663 Colorado Blvd., Commerce City, CO 80022
Employers Mutual Casualty Company (Name and Address of Contractor)
as Principal, and P.O. Box 712, Des Moines, IA 50306 as Surety,
(Name and Address of Surety)

are hereby held and firmly bound unto Adams County as OWNER in the penal sum
of Five Percent (5%--) of Amount Bid----- for the payment of which, well

and truly to be made, we hereby jointly and severally bind ourselves, successors, and assign.

Signed this 26th day of July, 2018.

The Condition of the above obligation is such that whereas the Principal has submitted to Adams County a certain BID,
attached hereto and hereby made a part hereof to enter a contract in writing,
Lowell Boulevard Improvements Clear Creek to 62nd Avenue, IFB Number 2018.627
for ACCELA Number IMP2013-00009, Project ID 30561503

(Project Name and Project Number)

NOW THEREFORE,

- (A) If said BID shall be rejected, then this obligation shall be void.
- (B) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (property completed in accordance with said BID) and shall furnish a BOND for his/her faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by an extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Jalisco International, Inc.
BY: [Signature]
(Principal, Contractor) Richard Ledezma
Employers Mutual Casualty Company
(Surety)

BY: [Signature]
Floriotta Acosta, Attorney-At-Law

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.



POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation
4. Illinois EMCASCO Insurance Company, an Iowa Corporation

5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation
7. Hamilton Mutual Insurance Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:
TODD BENGFORD, DONALD E. APPEBY, MARK SWEIGART, SARAH BROWN, FLORIETTA ACOSTA, SUSAN J. LATTARULO, LEEANNE MEAUX

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

ANY AND ALL BONDS

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire April 1, 2021, unless sooner revoked.

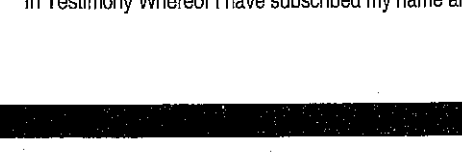
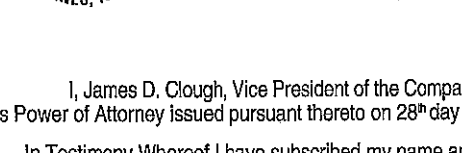
AUTHORITY FOR POWER OF ATTORNEY

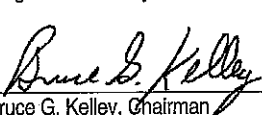
This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

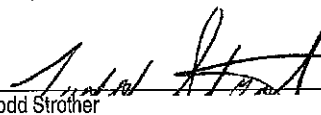
RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 28th day of March, 2018.

Seals

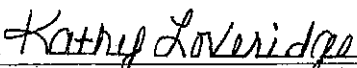



Bruce G. Kelley, Chairman
of Companies 2, 3, 4, 5 & 6; President
of Company 1; Vice Chairman and
CEO of Company 7


Todd Strother
Vice President

On this 28th day of March, 2018 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the Chairman, President, Vice Chairman and CEO, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

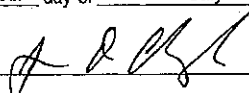
My Commission Expires October 10, 2019.

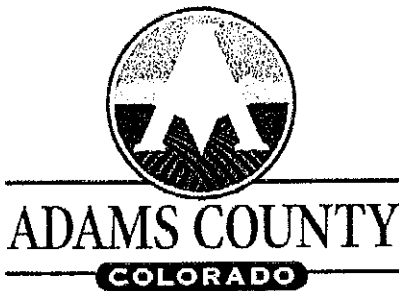

Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 28th day of March, 2018, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 28th day of July, 2018.


James D. Clough
Vice President



Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

BID SUMMARY

LOWELL BOULEVARD IMPROVMENTS CLEAR CREEK TO 62ND AVENUE
PROJECT ID: 3056.9125

TOTAL FROM BID SCHEDULES: \$ _____
(Amount in Figures)

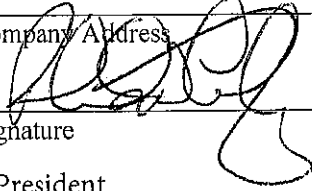
DOLLARS.
(Written Amount)

Respectfully Submitted:

Jalisco International, Inc.

Company Name

6663 Colorado Blvd. Commerce City, CO 80022

Company Address


Signature
President

Title

08/02/18

Date
303-287-8905

Telephone
303-287-0511

FAX No
Richard Ledezma

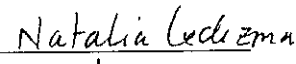
Name Printed or Typed
303-287-8905

Telephone

License No. (if applicable) _____

ADDENDA ACKNOWLEDGMENTS

I, the undersigned, as Secretary of the Corporation submitting the foregoing Proposal, hereby certify that, under and pursuant to the bylaws and resolutions of said corporation, each officer who has signed said Proposal on behalf of the corporation is fully and completely authorized so to do. (SEAL)

ATTEST: ~~Margaret Moran~~ 

My Commission expires: 11/17/2021

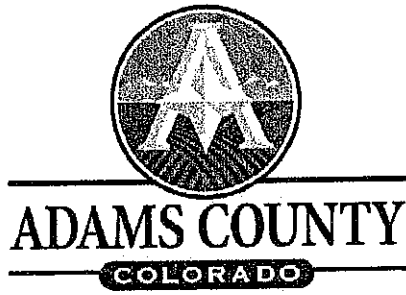
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ADDENDA NO.

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07/30/18
DATE

DATE

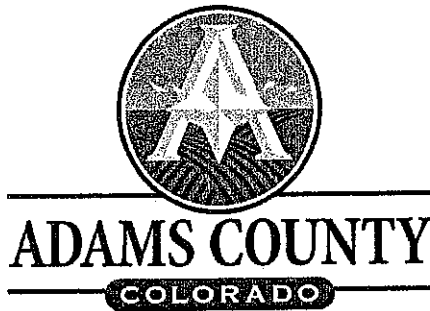
NATALIA MARIE LEDEZMA ROLLINS
Notary Public
State of Colorado
Notary ID # 20174047696
My Commission Expires 11-17-2021



Adams County Finance Department
Purchasing Division
4430 S. Adams County Parkway
Brighton, Colorado 80601

BID SCHEDULE(S)

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Adams County Finance Department
Purchasing Division
4430 S Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BID #2018.627
SUBMISSION CHECK LIST

SUBMISSION: It is imperative you address your submittal envelope as noted in the Bid Instructions.

Does your Bid comply with all the terms and conditions of this Solicitation?	YES	NO
Requirements met and response included?	YES	NO
Certificate of Incorporation or other formal documentation		
Meeting the requirement of years in business		
May any other governmental entity avail itself of this Agreement and purchase any and all items specified?	YES	NO
Have all Addendums been acknowledged, a duly authorized agent signature obtained, and enclosed on the Contractors Statement?	YES	NO
Original and the number of copies specified enclosed including electronic copy?	YES	NO
If applicable, have all necessary Bonds been included?	YES	NO
Contractor Certification of Compliance signed and enclosed?	YES	NO



ADAMS COUNTY
COLORADO

Adams County Finance Department
Purchasing Division
4430 S Adams County Parkway
Brighton, Colorado 80601

INVITATION FOR BID 2018.627

REFERENCE FORM

Contractors shall furnish the names, addresses and telephone numbers of a minimum of three (3) firms or government organizations for which the Contractor has provided similar projects:

Company Name See attached

Address _____

Reference Name _____

Reference Email Address _____

Telephone Number _____

Project Name _____

Value \$ _____

Company Name _____

Address _____

Reference Name _____

Reference Email Address _____

Telephone Number _____

Project Name _____

Value \$ _____

Company Name _____

Address _____

Reference Name _____

Reference Email Address _____

Telephone Number _____

Project Name _____

Value \$ _____

Largest Completed Projects for Past Five Years
Name of Applicant: Jalisco International, Inc

Category Number	Initial Contract \$ Amount	Final Contract \$ Amount	Project Name & Number	Owner's Name, Address, Contact Name & Phone No.	Project Description (must include description of work for category)	Start Date	Completion Date
1.F(2)	\$2,977,161.75	\$2,872,011.45	CDOT FSA 2873-162 120th & Lowell Intersection	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Johnny Ortega 303-289-8642	Intersection reconstruction on SH 287 at Lowell Blvd. Work to include Removal of Curb and Gutter, Removal of Asphalt Mat (Planing), Earthwork, Hot Mix Asphalt placement, Concrete Box Culvert extension, Guardrail, Curb and Gutter, Median Cover Material, Traffic Signal Upgrade, Signing and Striping.	05/14	1/15
1.G(1)	\$1,487,951.64	\$1,544,398.31	Project # CE12001, 56th & Quebec to Havana	City & County of Denver, 201 W Colfax Ave, Denver, CO 80202, Jess Ortiz, 720-913-1311, Subcontractor to Castle Rock Construction	3 bridge construction and 1 rehab. One bridge has standard CDOT 54 inch tall bulb tee girders and another has 24 inch x 48 inch box girders. There also is a steel pre-fabricated pedestrian bridge that is set upon cast-in-place concrete abutments and rehab of an existing bridge. The rehab bridge consists of an existing bridge with no abutments where we retrofit new abutments and approach slabs and install adjustable steel anchors to tie the existing superstructure to the new abutments. All bridges are single span and are built upon steel piling foundations.	02/11	2/13
1.G(1)	\$1,943,726.08	\$1,731,672.17	CDOT #NHPP 076A-008, I-76 at 88th Ave Operations Improvements	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jamal Mhareb 303-916-1052	Concrete structure and widening of eastbound off ramp from I-76 to 88th & 88th & Brighton Rd. 3 signal replacement at interchange.	06/14	2/17
1.F(2)	\$1,729,898.26	\$1,956,375.40	CDOT SHE 2873-167, Federal Medians, 52nd to 67th Ave	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Charlie Fox 303-365-7332	US 287 / Federal Blvd. beginning at the intersection of 52nd Ave. and extending to the intersection of 67th Ave. Consisting of raised median (curb & gutter, median cover material), median LED lighting, median landscape enhancements, minor bridge and signal work, signing and striping.	08/14	3/16
1.G(1)	\$8,726,114.90	\$34,324,085.57	RTD Fastracks DTC-S-0010, Various locations on I-70 East Corridor	RTD 1670 Broadway, Suite 2700, Denver, CO 80202, Brett Marsolais 303-861-6882	Construction of 4 bridges. 1) 5000' long light rail Flyover bridge with 35 spans using CDOT BT concrete girders and steel tub girders with some post-tensioned elements. Bridge files over I-70 & Union Pacific Railroad as well as various side streets. 2) 320' long Union Pacific freight rail bridge with 5 spans using steel girders. Bridge is over sand creek. 3) 309' long light rail bridge with 4 spans using modified CDOT concrete box girders. Bridge is over sand creek. 4) 110' long light rail bridge single span using modified CDOT concrete box girders. Bridge is over 48" at Pena Blvd.	12/11	3/16
1.F(1)	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Asphalt Paving	5/13	2/14

Category Number	Initial Contract \$ Amount	Final Contract \$ Amount	Project Name & Number	Owner's Name, Address, Contact Name & Phone No.	Project Description (must include description of work for category)	Start Date	Completion Date
1.F(2)	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Concrete intersection reconstruction which includes remove and replace concrete pavement, curb, gutter and sidewalk, minor signal work and drainage improvements.	5/13	2/14
1.F(3)	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Concrete intersection reconstruction which includes remove and replace concrete pavement, curb, gutter and sidewalk, minor signal work and drainage improvements.	5/13	2/14
1.B	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Excavation	5/13	2/14
1.D(1)	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Traffic Signals	5/13	2/14
1.E(4)	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Sewer Pipe	5/13	2/14
Other	\$2,595,478.15	\$2,400,988.64	CDOT STU 177A-008, University & Bellevue Intersection Reconstruction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jeff Hampton, 303-501-3695	Signs, Public information, Striping, Clean Culverts	5/13	2/14
1.F(2)	\$4,982,990.85	\$4,562,826.68	City of Westminster Project No. NHPP 2873-181, US287 (120TH AVE) / Federal Blvd. Intersection Improvement	City of Westminster, 4800 W. 92nd Ave. Westminister, CO 80031, Dave Loseman 303-658-2125	The reconstruction of the 120th Avenue and Federal Boulevard Intersection and appurtenant utilities. The roadway approaches to the intersection, and the intersection, will be reconstructed after installation of storm sewers and other miscellaneous utility adjustments.	02/16	5/17
1F(1)	\$4,982,990.85	\$4,562,826.68	City of Westminster Project No. NHPP 2873-181, US287 (120TH AVE) / Federal Blvd. Intersection Improvement	City of Westminster, 4800 W. 92nd Ave. Westminister, CO 80031, Dave Loseman 303-658-2127	Asphalt Paving	02/16	5/17
1E(4)	\$4,982,990.85	\$4,562,826.68	City of Westminster Project No. NHPP 2873-181, US287 (120TH AVE) / Federal Blvd. Intersection Improvement	City of Westminster, 4800 W. 92nd Ave. Westminister, CO 80031, Dave Loseman 303-658-2128	Piped Sewer	02/16	5/17
1.D(1)	\$4,982,990.85	\$4,562,826.68	City of Westminster Project No. NHPP 2873-181, US287 (120TH AVE) / Federal Blvd. Intersection Improvement	City of Westminster, 4800 W. 92nd Ave. Westminister, CO 80031, Dave Loseman 303-658-2126	Traffic Signals	02/16	5/17
1C(1)	\$4,982,990.85	\$4,562,826.68	City of Westminster Project No. NHPP 2873-181, US287 (120TH AVE) / Federal Blvd. Intersection Improvement	City of Westminster, 4800 W. 92nd Ave. Westminister, CO 80031, Dave Loseman 303-658-2128	Landscape	02/16	5/17
Other	\$4,982,990.85	\$4,562,826.68	City of Westminster Project No. NHPP 2873-181, US287 (120TH AVE) / Federal Blvd. Intersection Improvement	City of Westminster, 4800 W. 92nd Ave. Westminister, CO 80031, Dave Loseman 303-658-2128	Traffic Control and Striping	02/16	5/17
1.G(1)	\$939,657.84	\$1,272,466.00	CDOT FBR 0362-032, SH 36 Comanche Creek	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Tom Hunt 303-365-7244	Removal of timber bridge with a concrete girder bridge. Work includes grading, drainage improvements and precast panel facing.	02/12	6/12

Category Number	Initial Contract \$ Amount	Final Contract \$ Amount	Project Name & Number	Owner's Name, Address, Contact Name & Phone No.	Project Description (must include description of work for category)	Start Date	Completion Date
1.G(1)	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Remove and replace Alameda bridge over I-25 in 3 phases. Superstructure cast in place boxes, cast in place deck. 2 spans 240'x180' wide, 3 coffer dam retaining walls 1500ft long height 10' 20' consisting of drilled caissons with jet grout shafts to seal underpass from ground water. Soil nail wall with cast in place fascia, 600' long 20'-10 ft heights. Tripple 16'x8' concrete box culvert 500' long	02/10	12/14
1.G(2)	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Remove and replace Alameda bridge over I-25 in 3 phases. Superstructure cast in place boxes, cast in place deck. 2 spans 240'x180' wide, 3 coffer dam retaining walls 1500ft long height 10' 20' consisting of drilled caissons with jet grout shafts to seal underpass from ground water. Soil nail wall with cast in place fascia, 600' long 20'-10 ft heights. Tripple 16'x8' concrete box culvert 500' long	02/10	12/14
1.F(1)	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Asphalt paving	02/10	12/14
1.F(2)	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Concrete Paving 13", Concrete sidewalk, Curb and Gutter, Concrete Median	02/10	12/14
1.D(1)	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Traffic Signals	02/10	12/14
1.E(4)	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Sewer Pipe	02/10	12/14
B	\$29,607,833.20	\$28,022,323.99	CDOT Project ES6 C010-101, I-25 & Alameda Bridge Replacement	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Terri McKinney 303-370-2040	Excavation	02/10	12/14
1.G(1)	\$7,330,267.99	\$7,175,356.84	Koss Construction Company, NDOR #NH-80-1(81), I-80, Sidney West, NE	Nebraska Department of Roads 1500 Highway 2, Lincoln, Nebraska 68502, Wayne Rhamy 308-631-2469	Rehabilitation of 10 structures located on I-80 and across I-80 in Sidney Nebraska. The project ranges in rehabs from entire decks (4 bridges) to bridge rail (all). New approach slabs will be poured on all structures that include steel H piling. Crash walls will be built (2 structures) for the piers next to BNSF tracks. Bridges to receive epoxy overlay. The structure earthwork is also in our scope including structure excavation and structure backfill.	03/15	06/17
1.F(2)	\$1,540,156.65	\$1,491,721.97	CDOT FSA R600-378, SH 88 Arapahoe Rd. from Havana to Revere Pkwy	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Michael Kucey 303-750-7436	Constructing accel and decel turn lanes, MSE Wall, storm sewer, asphalt pavement, curb & gutter, sidewalk and Signal Improvements.	06/12	7/13

Category Number	Initial Contract \$ Amount	Final Contract \$ Amount	Project Name & Number	Owner's Name, Address, Contact Name & Phone No	Project Description (must include description of work for category)	Start Date	Completion Date
1.G(1)	\$5,110,523.01	\$5,342,445.95	Colorado Center Bicycle/Pedestrian Bridge Over I-25, Contract No. 201312517	City & County of Denver, 201 W Colfax Ave, Denver, CO 80202, James Geist 720-913-4504	Construction of a 6 span bridge containing concrete box girders with a steel tied arch/truss main span over I-25. The work also includes bridge approaches both precast and cast in place concrete walls. Storm sewer upgrades and roadway resurfacing will also be included.	01/14	8/15
1.G(1)	\$5,883,850.20	\$5,098,682.85	CDOT Project FBR 2873-160, Colfax & HWY 287 Bridge	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Jim Martin 303-951-8740	Remove and replace Federal bridge over Colfax Ave. in 3 phases. Superstructure is BT42 Girders with deck panels and cast in place deck. Bridge is 2 spans and 212'long x 116' wide. Storm Sewer utility improvements include 18, 24, and 36 inch Reinforced concrete pipe and 2 permanent detention ponds. Mill and overlay both Federal and Colfax in general area.	9/11	12/13
1.G(1)	\$849,224.20	\$806,398.12	Town of Parker, Chambers Rd over Happy Canyon Creek Bridge Repairs, Project #CIP 17-002	Town of Parker, 20120 E Mainstreet, Parker, CO 80138 Chris Hudson 303-805-3203	The project consists of repairs to the existing Chambers Road over Happy Canyon Bridge. The scope of the work consists of but not limited to structural concrete removal/replacement (101 CY), thin bonded overlay (polyester concrete), concrete flatwork, bridge railing removal/reset, pedestrian rail removal/reset, asphalt pavement, excavation/backfill, pavement markings, traffic control and erosion control.	03/17	09/17
1.G(1)	\$1,397,535.70	\$1,362,705.35	El Paso County, Oil Well Bridge Replacement, Project #IFB 17-027R	El Paso County, 200 S Cascade, Suite 150, Colorado Springs, CO 80903, Kevin Diekelman 719-520-6863	Removal of an old wood bridge and replacement with a new steel pile and concrete structure including new guardrails. The work also includes extensive site work to regrade the existing channel and installation of 2 grouted boulder drop structures. There is also a substantial amount of riprap to be placed around the structure.	03/17	09/17
1.G(1)	\$154,745.00	\$307,739.00	Arapahoe County #C08-014, Bridge Repair at Quincy Ave	Arapahoe County 10730 E. Briarwood Ave, Suite 100, Centennial, CO 80112, Willie Cuevas 720-874-6500	Bridge Rehab. Removing unsound concrete and re-patching with new, clean and paint metal bridge bearings, excavate and grade under bridge to install approximately 460cy of 12" rip rap.	09/10	10/11
1.F(2)	\$1,343,900.00	\$1,416,634.00	Adolfson and Peterson Construction DR-09-00409-CV-002-D, York & Brighton Blvd	Suncor, Energy, 5801 Brighton Blvd, Commerce City, CO 80022, Dan Imo 720-324-9739	Roadway improvements, widening of Brighton Blvd and York St., new curb and gutter, sidewalk, asphalt, inlets, manholes, stripping and signing, 24 inch and 15 inch RCP.	06/12	10/13
1.G(1)	\$7,527,520.47	\$7,786,765.58	CDOT IM 0761-191, I-76 & Brush, Bridge Construction, Subcontractor to Castle Rock Construction	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Gale Siedenburgh, 970-381-6626	Replace bridges. The 12 bridges are single span bridges ranging from 100-140 feet. The bridges are BT concrete girder bridges using precast deck panels. Each bridge has 6 girder runs and is about 40 feet wide.	02/13	10/15
1.F(2)	\$4,858,909.20	\$4,857,692.22	CDOT FSA 1191-027, SH 119 at Jay Rd. and Niwot Rd. Intersections	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Richard Wenzel III 303-546-5662	Concrete Pavement, Signal Replacement, MSE Wall, and Drainage Improvements	8/12	11/13

Category Number	Initial Contract \$ Amount	Final Contract \$ Amount	Project Name & Number	Owner's Name, Address, Contact Name & Phone No.	Project Description (must include description of work for category)	Start Date	Completion Date
1.F(2)	\$3,478,053.20	\$4,214,936.76	City of Commerce City Project No. 9062-10, 104th Ave & HWY 85	City of Commerce City, 8602 Rosemary St, Commerce City, CO 80022, Glen Ellis 303-289-8150	Partial reconstruction of State Highway 44 and US Highway 85 intersection. The improvements include demolition, earthwork, concrete and asphalt pavement, curb and gutter, sidewalk, traffic signals, traffic control, conduit, storm sewer, sanitary sewer, potable and non-potable waterlines, and erosion control and re-vegetation	03/11	12/12
1.D(1)	\$3,478,053.20	\$4,214,936.76	City of Commerce City Project No. 9062-10, 104th Ave & HWY 85	City of Commerce City, 8602 Rosemary St, Commerce City, CO 80022, Glen Ellis 303-289-8150	Traffic Signals	03/11	12/12
1.E(4)	\$3,478,053.20	\$4,214,936.76	City of Commerce City Project No. 9062-10, 104th Ave & HWY 85	City of Commerce City, 8602 Rosemary St, Commerce City, CO 80022, Glen Ellis 303-289-8150	Sewer Pipe	03/11	12/12
1.F(1)	\$3,478,053.20	\$4,214,936.76	City of Commerce City Project No. 9062-10, 104th Ave & HWY 85	City of Commerce City, 8602 Rosemary St, Commerce City, CO 80022, Glen Ellis 303-289-8150	Asphalt Paving	03/11	12/12
1.B	\$3,478,053.20	\$4,214,936.76	City of Commerce City Project No. 9062-10, 104th Ave & HWY 85	City of Commerce City, 8602 Rosemary St, Commerce City, CO 80022, Glen Ellis 303-289-8150	Excavation	03/11	12/12
1.C(1)	\$3,478,053.20	\$4,214,936.76	City of Commerce City Project No. 9062-10, 104th Ave & HWY 85	City of Commerce City, 8602 Rosemary St, Commerce City, CO 80022, Glen Ellis 303-289-8150	Landscaping	03/11	12/12
1.G(1)	\$1,376,371.85	\$1,331,479.75	CDOT BR157A-011, SH 157 & US 36	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Stacy Dewitt 303-546-5652	Bridge Deck Replacement, Bearing Device Replacement, MSE Walls, and Guardrail Improvements	09/12	12/13
1.G(1)	\$6,119,200.58	\$4,501,231.35	Ames/Granite Joint Venture CDOT #NH 0361-093, Phase 2 US 36 Managed Lanes	CDOT 4201 East Arkansas Ave, Denver, CO 80222, Kevin Strahley 303-404-7001	Concrete (patching), Epoxy Resin, Removal Expansion Device, Bridge Expansion Device (0-4), Bridge Expansion Device (0-9), Concrete Class D, Concrete Sealer, Structure Coating. Remove and Replace Chain Link Fence	07/14	12/16

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

JALISCO INTERNATIONAL, INC.

is a

Corporation

formed or registered on 08/01/1985 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871631668 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 08/08/2018 that have been posted, and by documents delivered to this office electronically through 08/10/2018 @ 14:47:34 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 08/10/2018 @ 14:47:34 in accordance with applicable law. This certificate is assigned Confirmation Number 11057152 .



Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

Jalisco International, Inc.
6663 Colorado Boulevard
Commerce City, CO 80022

SURETY:

(Name, legal status and principal place of business)

Employers Mutual Casualty Company

P.O. Box 712

Des Moines, IA 50306

Mailing Address for Notices

P.O. Box 712

Des Moines, IA 50306

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

Adams County

4430 South Adams County Parkway, Suite C4000A
Brighton, CO 80601

CONSTRUCTION CONTRACT

Date:

Amount: \$ \$3,761,864.30 (Three Million Seven Hundred Sixty-one Thousand Eight Hundred Sixty-four And 30/100)

Description: Lowell Boulevard Improvements Clear Creek to 62nd Avenue. Project No. 2018.627-IFB
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$ \$3,761,864.30 (Three Million Seven Hundred Sixty-one Thousand Eight Hundred Sixty-four And 30/100)

Modifications to this Bond: ☒ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company:  (Corporate Seal)
Jalisco International, Inc.

Signature:

Name Richard Ledezma
and Title: President

SURETY

Company:  (Corporate Seal)
Employers Mutual Casualty Company

Signature:

Name Florietta Acosta
and Title: Attorney-in-Fact

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Holmes Murphy
7600 East Orchard Road, Suite 330 South
Greenwood Village, CO 80111
() -

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

1. *Pharmaceuticals* (1998) 10, 101-102.
 2. *Pharmaceuticals* (1998) 10, 103-104.
 3. *Pharmaceuticals* (1998) 10, 105-106.
 4. *Pharmaceuticals* (1998) 10, 107-108.
 5. *Pharmaceuticals* (1998) 10, 109-110.
 6. *Pharmaceuticals* (1998) 10, 111-112.
 7. *Pharmaceuticals* (1998) 10, 113-114.
 8. *Pharmaceuticals* (1998) 10, 115-116.
 9. *Pharmaceuticals* (1998) 10, 117-118.
 10. *Pharmaceuticals* (1998) 10, 119-120.
 11. *Pharmaceuticals* (1998) 10, 121-122.
 12. *Pharmaceuticals* (1998) 10, 123-124.
 13. *Pharmaceuticals* (1998) 10, 125-126.
 14. *Pharmaceuticals* (1998) 10, 127-128.
 15. *Pharmaceuticals* (1998) 10, 129-130.
 16. *Pharmaceuticals* (1998) 10, 131-132.
 17. *Pharmaceuticals* (1998) 10, 133-134.
 18. *Pharmaceuticals* (1998) 10, 135-136.
 19. *Pharmaceuticals* (1998) 10, 137-138.
 20. *Pharmaceuticals* (1998) 10, 139-140.
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 111. *Pharmaceuticals* (1998

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

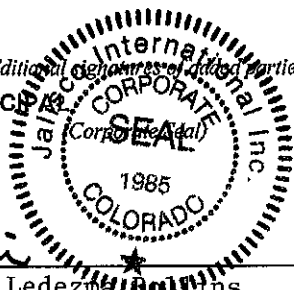
Company:

Signature:

Name and Title: Natalia Ledezma

Address

Secretary



SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address

Bond No. S464176

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Jalisco International, Inc.
6663 Colorado Boulevard
Commerce City, CO 80022

SURETY:

(Name, legal status and principal place of business)

Employers Mutual Casualty Company

P.O. Box 712

Des Moines, IA 50306

Mailing Address for Notices

P.O. Box 712

Des Moines, IA 50306

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

Adams County

4430 South Adams County Parkway, Suite C4000A
Brighton, CO 80601

CONSTRUCTION CONTRACT

Date:

Amount: \$ \$3,761,864.30 (Three Million Seven Hundred Sixty-one Thousand Eight Hundred Sixty-four And 30/100)

Description: Lowell Boulevard Improvements Clear Creek to 62nd Avenue. Project No. 2018.627-IFB
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$ \$3,761,864.30 (Three Million Seven Hundred Sixty-one Thousand Eight Hundred Sixty-four And 30/100)

Modifications to this Bond: ☒ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Jalisco International, Inc.

Signature:

Name Richard Ledezma
and Title: President

SURETY

Company: (Corporate Seal)

Employers Mutual Casualty Company

Signature:

Name Florietta Acosta
and Title: Attorney-in-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Holmes Murphy

7600 East Orchard Road, Suite 330 South
Greenwood Village, CO 80111

() -

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:



Signature: N. Rollins

Name and Title: Natalia Ledezma Rollins
Address Secretary

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:
Address



POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation
4. Illinois EMCASCO Insurance Company, an Iowa Corporation

5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation
7. Hamilton Mutual Insurance Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:
TODD BENGFOR, DONALD E. APPLEBY, MARK SWEIGART, SARAH BROWN, FLORIETTA ACOSTA, SUSAN J. LATTARULO, LEEANNE MEAUX

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

ANY AND ALL BONDS

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire April 1, 2021, unless sooner revoked.

AUTHORITY FOR POWER OF ATTORNEY


This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

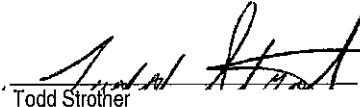
RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 28th day of March, 2018.

Seals

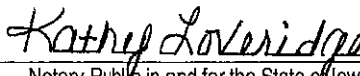



Bruce G. Kelley, Chairman
of Companies 2, 3, 4, 5 & 6; President
of Company 1; Vice Chairman and
CEO of Company 7


Todd Strother
Vice President

On this 28th day of March, 2018 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the Chairman, President, Vice Chairman and CEO, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2019.


Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 28th day of March, 2018, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this _____ day of _____, _____.


James D. Clough
Vice President



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/16/2018

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 Denver Agency 210 University Blvd, Suite 600 Denver CO 80206-4661		CONTACT NAME: Linda Wagner PHONE (A/C, No, Ext): (303) 892-8900 FAX (A/C, No): E-MAIL ADDRESS: linda@denveragency.com																									
INSURED Jalisco International Inc. 6663 Colorado Blvd. Commerce City CO 80022		INSURER(S) AFFORDING COVERAGE <table border="1"><tr><td>INSURER A:</td><td>Travelers Indemnity Company</td><td>NAIC #</td><td>25658</td></tr><tr><td>INSURER B:</td><td>Charter Oak Fire Ins</td><td></td><td>25615</td></tr><tr><td>INSURER C:</td><td>Travelers Prop Cas Co America</td><td></td><td>25674</td></tr><tr><td>INSURER D:</td><td>Pinnacle Assurance</td><td></td><td>41190</td></tr><tr><td>INSURER E:</td><td>Great American Insurance Co</td><td></td><td>37532</td></tr><tr><td>INSURER F:</td><td></td><td></td><td></td></tr></table>		INSURER A:	Travelers Indemnity Company	NAIC #	25658	INSURER B:	Charter Oak Fire Ins		25615	INSURER C:	Travelers Prop Cas Co America		25674	INSURER D:	Pinnacle Assurance		41190	INSURER E:	Great American Insurance Co		37532	INSURER F:			
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INSURER D:	Pinnacle Assurance		41190																								
INSURER E:	Great American Insurance Co		37532																								
INSURER F:																											

COVERAGES**CERTIFICATE NUMBER:** 17-18-newWC w/prof**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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	DT-CO-0980C672-IND-17	11/13/2017	11/13/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY	Y	Y	DT-810-0980C672-COF-17	11/13/2017	11/13/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist \$ 1,000,000
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		Y	DTSM-CUP-0980C672-TIL-17	11/13/2017	11/13/2018	EACH OCCURRENCE \$ 13,000,000 AGGREGATE \$ 13,000,000
	<input checked="" type="checkbox"/> 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 <input type="checkbox"/>	N/A	Y	4212754	10/01/2018	10/01/2019
E	Professional Liability coverage Pollution Liability Contracting Services			PCE21131906	01/20/2017	01/20/2018	Each act /Aggr-Prof liab \$3mill/\$3mil Each condition limit \$5,000,000 Aggregate limit \$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project No. 2018.627 RFB Lowell Improvements-Clear Creek to 62nd Ave., Adams County, CO.

Adams County and the Colorado Department of Transportation are included as Additional Insureds for General Liability on a primary basis. Waiver of Subrogation applies.

CERTIFICATE HOLDER**CANCELLATION**

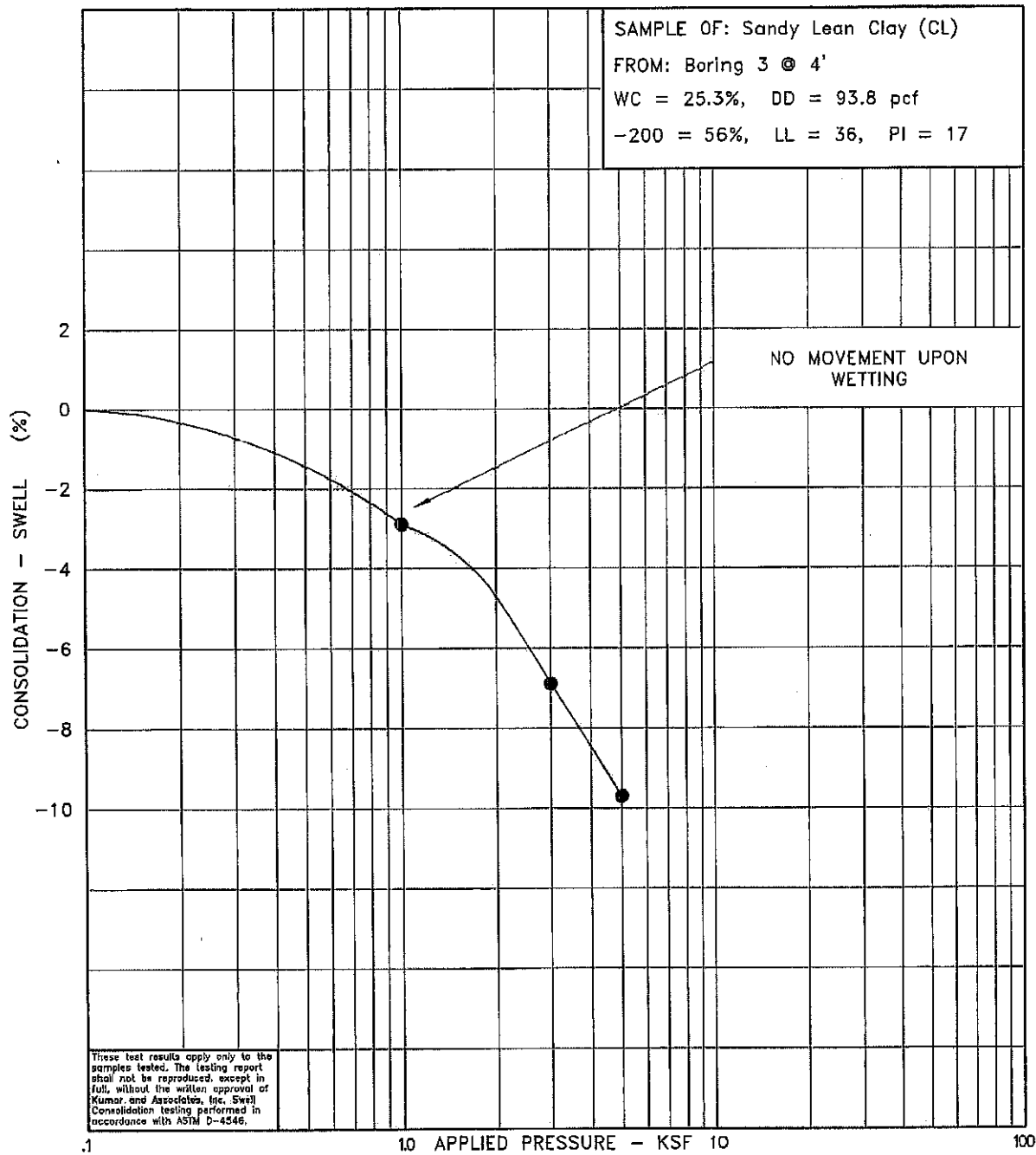
Adams County 4430 S. Adams County Parkway Brighton CO 80601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Kathy H. Roth</i>
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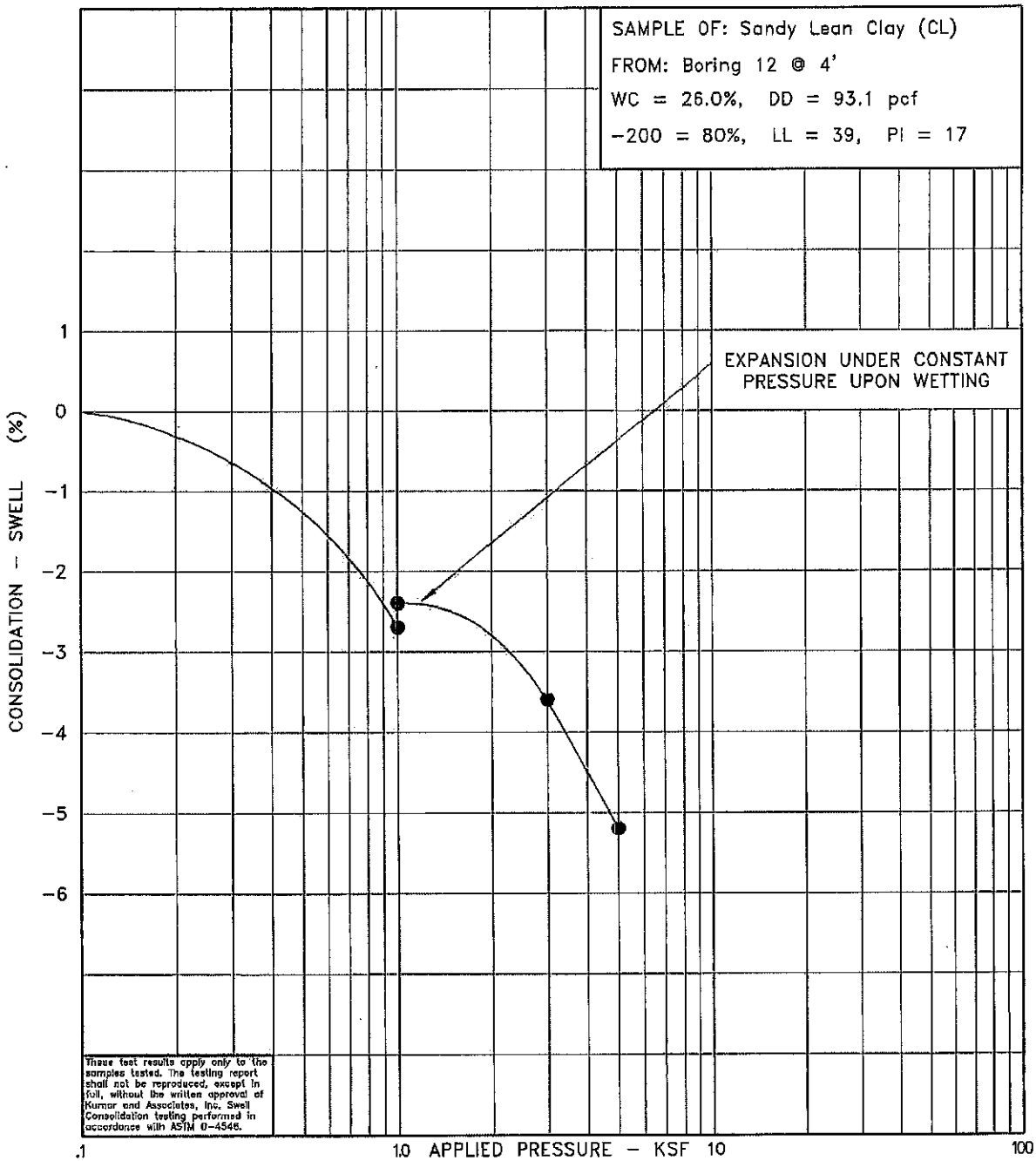
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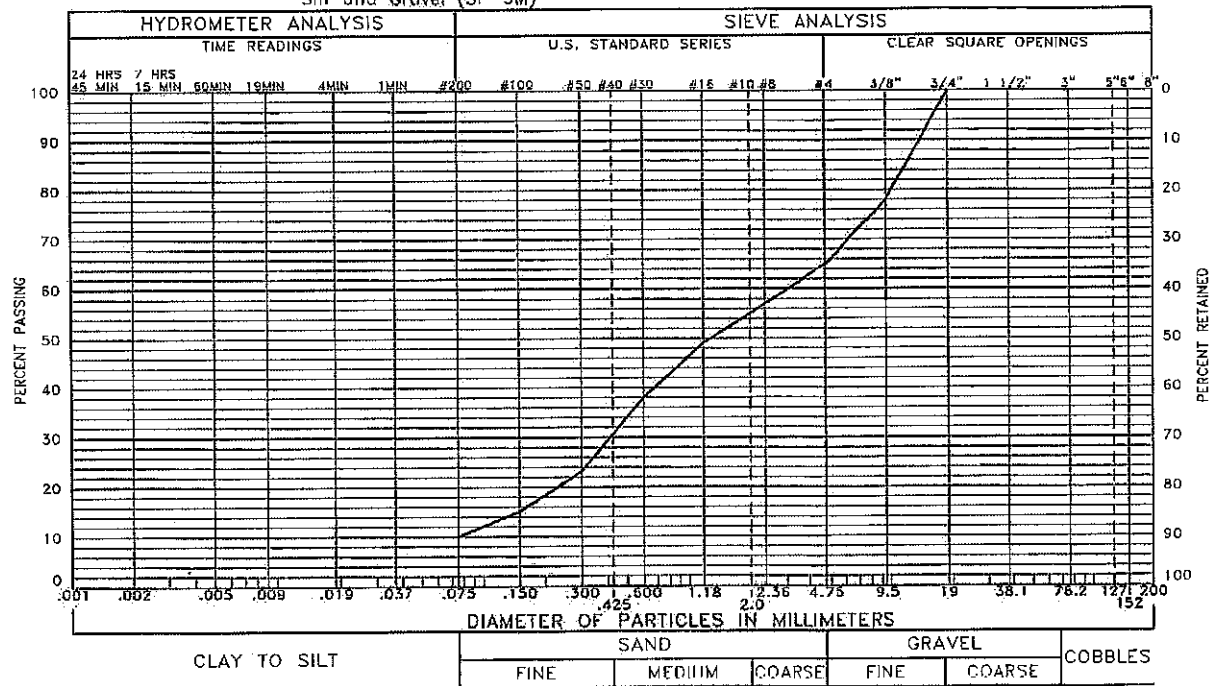
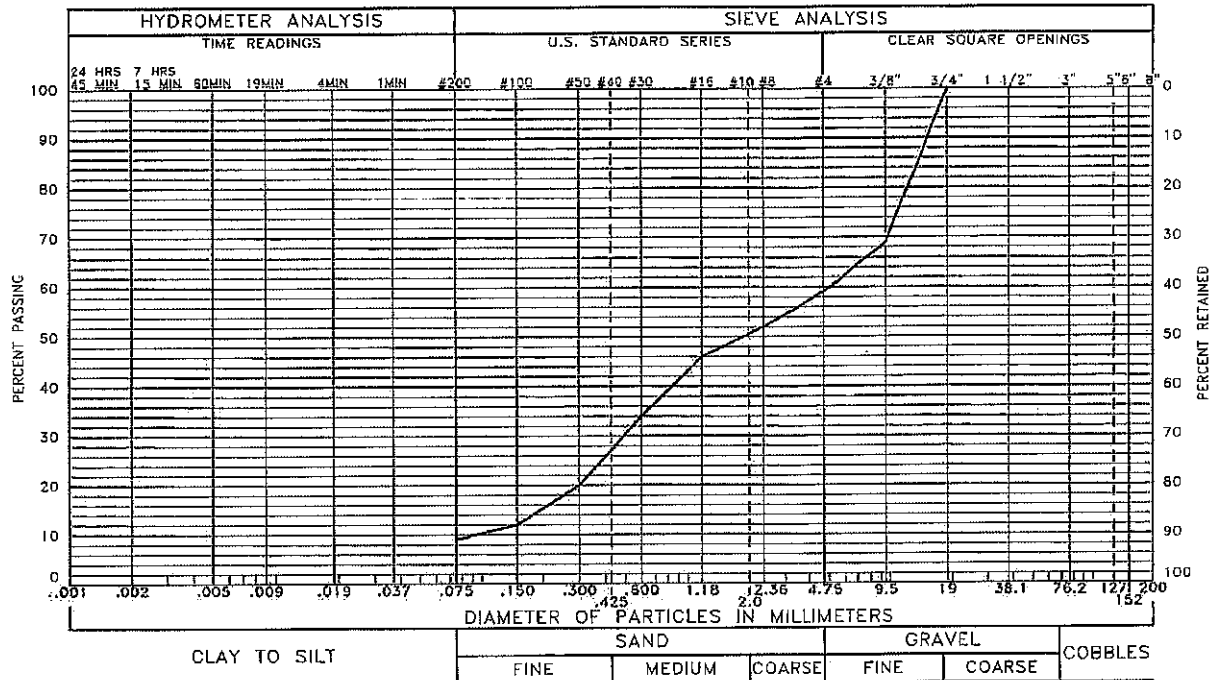
BID RESULTS:
2018.627 -Lowell Blvd Clear Creek to 62nd Ave Overall Bid Results**

		Jalisco International Inc.	American West Construction	Concrete Express Inc.	Colt & Steel	Duran Excavating	Wagner Construction
Overall Project Bid Amount							
1	Bid Amount	\$ 3,761,864.30	\$ 3,785,450.00	\$ 3,851,162.25	\$ 3,997,624.86	\$ 4,039,950.30	\$ 4,305,000.00
2	Contractor's Certification of Compliance	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
3	Contractor's Statement	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
4	W-9	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
5	Certificate of Good Standing	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
6	Bid Bond	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
7	Reference Form	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
Project Completion After ARO* - Construction Contract Calendar Days		280	280	280	280	280	280

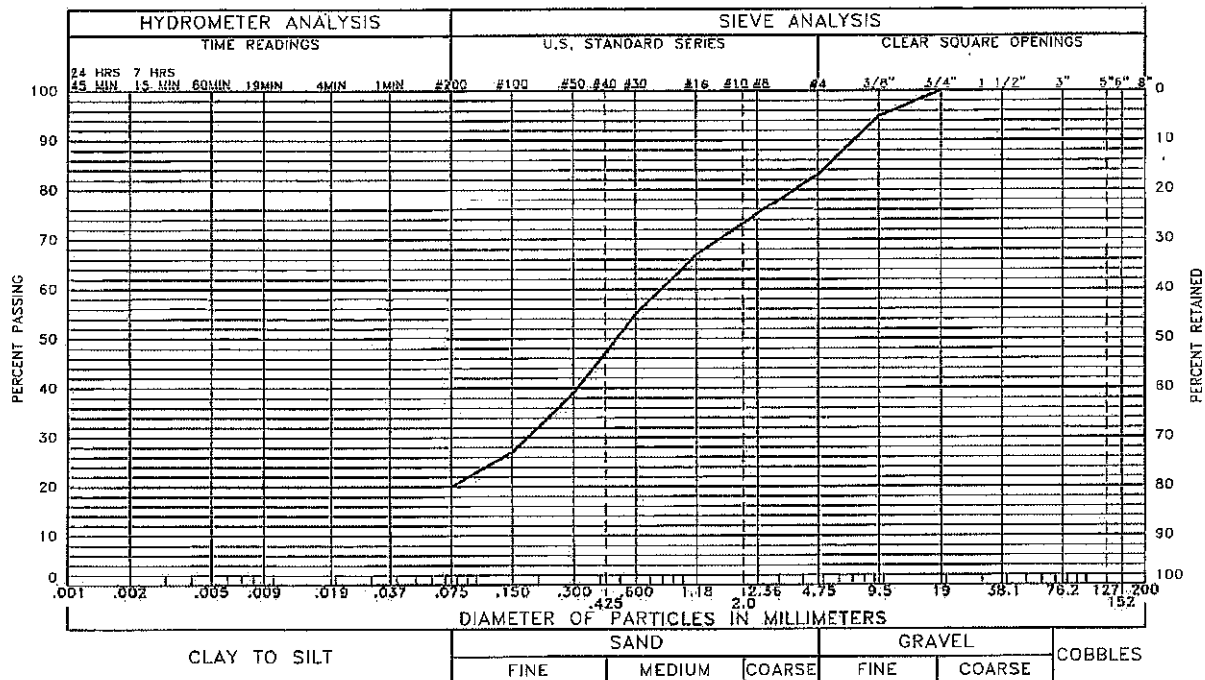
***All Firms can meet the 280 project completion schedule after NTP.**







These test results apply only to the samples which were tested. The testing report shall not be reproduced, except in full, without the written approval of Kumar & Associates, Inc. Sieve analysis testing is performed in accordance with ASTM D422, ASTM C136 and/or ASTM D1140.



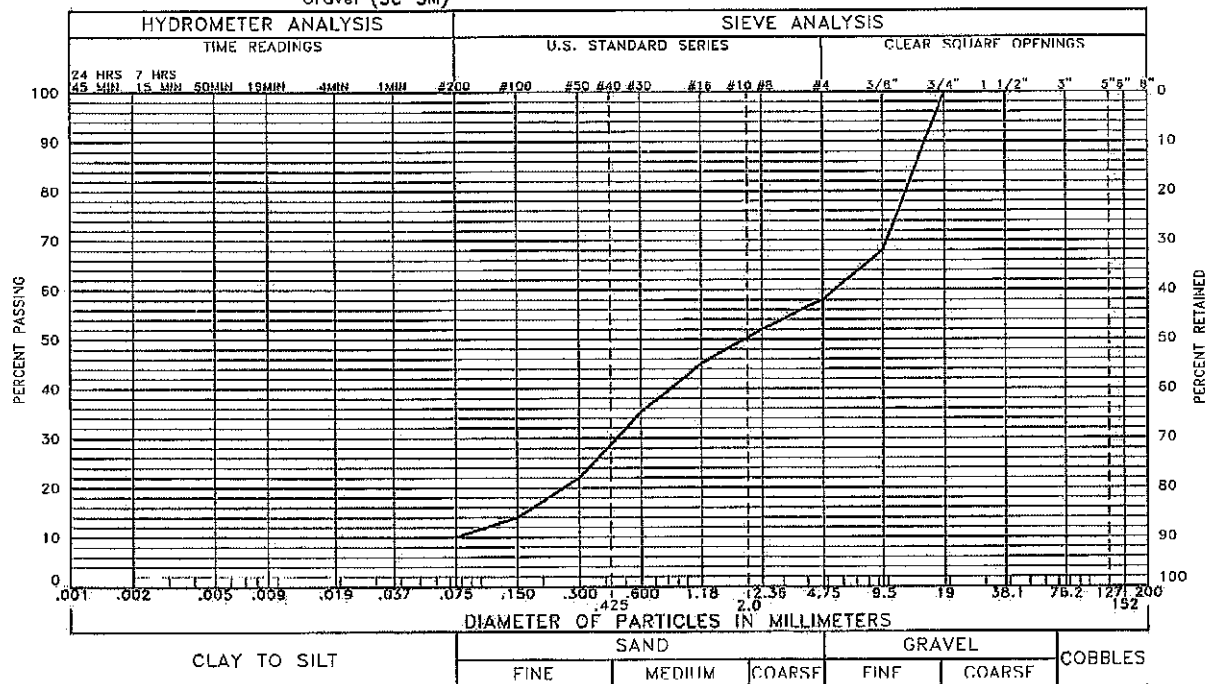
GRAVEL 17 % SAND 63 % SILT AND CLAY 20 %

LIQUID LIMIT 23

PLASTICITY INDEX 4

SAMPLE OF: Fill: Silty Clayey Sand with Gravel (SC-SM)

FROM: Boring 10 @ 1'-3'



GRAVEL 42 % SAND 48 % SILT AND CLAY 10 %

LIQUID LIMIT NV

PLASTICITY INDEX NP

SAMPLE OF: Fill: Poorly Graded Sand with Silt and Gravel (SP-SM)

FROM: Boring 11 @ 1'

These test results apply only to the samples which were tested. The testing report shall not be reproduced, except in full, without the written approval of Kumar & Associates, Inc. Sieve analysis testing is performed in accordance with ASTM D422, ASTM C136 and/or ASTM D1140.

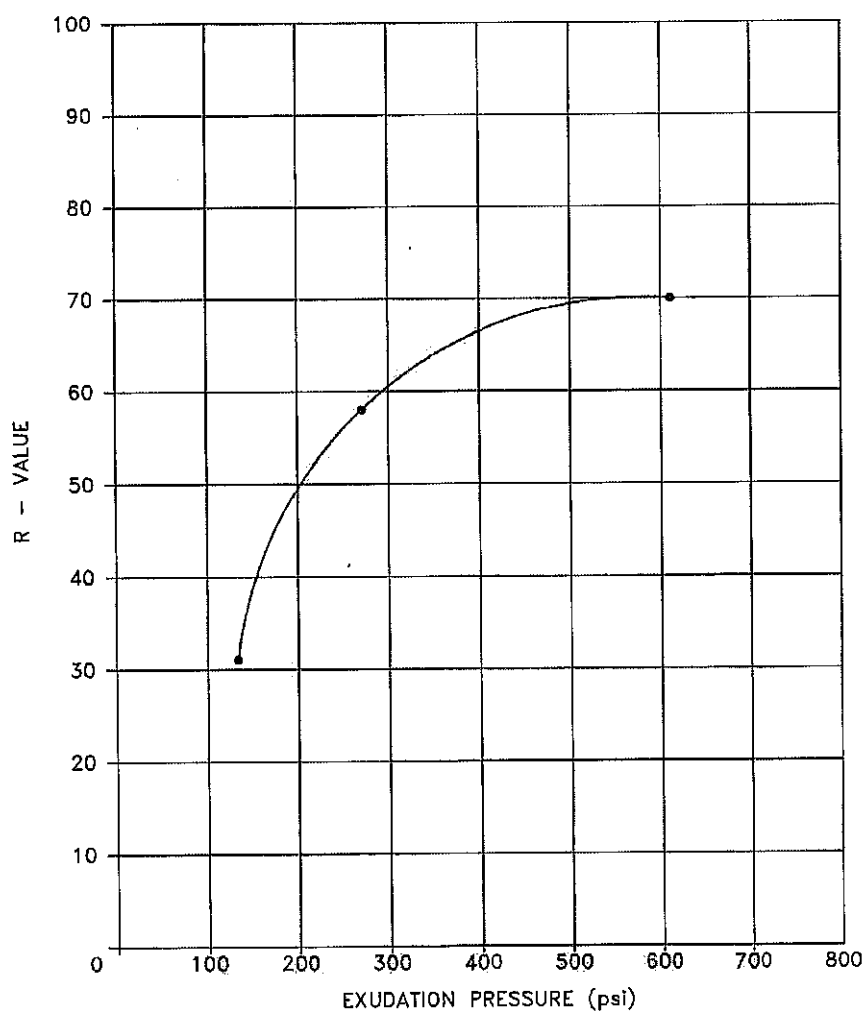
11-1-470

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GRADATION TEST RESULTS

Fig. 7

TEST SPECIMEN	1	2	3	4	R -VALUE (300 psi)
MOISTURE CONTENT (%)	9.6	8.7	7.4		
DENSITY (pcf)	125.9	128.8	128.0		
EXPANSION PRESSURE (psi)	0.000	0.000	0.000		
EXUDATION PRESSURE (psi)	133	271	610		
R VALUE	31	58	70		61



SOIL TYPE: Fill: Silty, Clayey Sand with Gravel (SC-SM)

LOCATION: Boring 10 @ 1'-3'

DATE SAMPLED: 11-22-11 DATE RECEIVED: 11-29-11 DATE TESTED: 12-02-11

GRAVEL: 17 % SAND: 63 % SILT AND CLAY: 20 %

LIQUID LIMIT: 23 PLASTICITY INDEX: 4

These test results apply only to the samples which were tested. The testing report shall not be reproduced, except in full, without the written approval of Kumar & Associates, Inc. R-value performed in accordance with ASTM D2844. Atterberg limits performed in accordance with ASTM D4318. Sieve analyses performed in accordance with ASTM D422, D1140.

11-1-470

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HVEEM STABILOMETER TEST RESULTS

Fig. 8

PROJECT NO.: 11-1-470
 PROJECT NAME: Lowell Blvd. Widening
 DATE SAMPLED: 11-22-11
 DATE RECEIVED: 11-29-11

TABLE I
 SUMMARY OF LABORATORY TEST RESULTS

SAMPLE LOCATION		DATE TESTED	NATURAL MOISTURE CONTENT (%)	NATURAL DRY DENSITY (pcf)	GRADATION		PERCENT PASSING No. 200 SIEVE	ATTERBERG LIMITS		WATER SOLUBLE SULFATES (%)	AASHTO CLASSIFICATION (group index)	SOIL OR BEDROCK TYPE
BORING	DEPTH (feet)				GRAVEL (%)	SAND (%)		LIQUID LIMIT (%)	PLASTICITY INDEX (%)			
1	1	11-30-11	26.0	107.7	8	56	36	25	11		A-6 (0)	Filt: Silty Clayey Sand (SC-SM)
2	1	11-30-11	9.5	125.1			36	21	7	<0.02	A-4 (0)	Filt: Silty Clayey Sand (SC-SM)
3	4	11-30-11	25.3	93.8			56	36	17		A-6 (7)	Sandy Lean Clay (CL)
4	1	11-30-11	9.0	127.9	11	56	33	21	8		A-2-4 (0)	Filt: Silty Clayey Sand (SC-SM)
5	4	11-30-11	18.4	108.4	19	24	57	32	13	0.04	A-6 (5)	Sandy Lean Clay with Gravel (CL)
6	1	11-30-11	18.7	101.6	7	46	47	31	10		A-4 (2)	Filt: Silty Clayey Sand (SC-SM)
7	1	11-30-11	7.0	123.2	29	52	19	21	5		A-2-4 (0)	Filt: Clayey Sand with Gravel (SC)
8	1	11-30-11	3.2		41	50	9	NV	NP		A-1-a (0)	Filt: Poorly Graded Sand with Silt & Gravel (SP-SM)
9	1	11-30-11	4.9		35	55	10	NV	NP		A-1-b (0)	Filt: Poorly Graded Sand with Silt & Gravel (SP-SM)
10	1-3	11-30-11			17	63	20	23	4	0.06	A-2-4 (0)	Filt: Silty Clayey Sand with Gravel (SC-SM)
11	1	11-30-11	4.3		42	48	10	NV	NP		A-1-a (0)	Filt: Poorly Graded Sand with Silt & Gravel (SP-SM)
12	4	11-30-11	26.0	93.1			80	39	17		A-6 (13)	Sandy Lean Clay (CL)
13	1	11-30-11	8.1	127.6	22	55	23	19	5		A-2-4 (0)	Filt: Silty Clayey Sand with Gravel (SC-SM)
14	1	11-30-11	6.2	128.5	20	64	16	17	5		A-2-4 (0)	Filt: Silty Clayey Sand with Gravel (SC-SM)

TABLE II
SUMMARY OF FWD STRUCTURAL CAPACITY DETERMINATION
Project No. 11-1-470

STATION	LANE	M _R (psi)	SN _{exist}	SN _{design}	Rqd HMA Overlay (in)
0+00	SB	3,925	2.47	4.02	4.0
0+48	NB	4,050	2.53	3.98	4.0
1+00	SB	5,025	3.45	3.69	1.0
1+50	NB	6,100	3.50	3.45	0
2+01	SB	9,650	3.93	2.92	0
2+50	NB	6,000	3.98	3.47	0
3+02	SB	7,975	3.95	3.14	0
3+47	NB	9,025	3.85	2.99	0
4+02	SB	6,575	3.80	3.35	0
4+46	NB	5,950	3.99	3.48	0
5+02	SB	5,850	2.34	3.50	3.0
5+50	NB	5,150	3.52	3.66	1.0
6+01	SB	7,450	4.05	3.21	0
6+50	NB	6,200	3.81	3.43	0
7+00	SB	6,150	2.59	3.44	2.5
7+49	NB	6,050	4.06	3.46	0
8+02	SB	7,250	4.04	3.24	0
8+48	NB	6,450	4.15	3.38	0
9+04	SB	6,950	3.89	3.29	0
9+48	NB	7,850	3.88	3.15	0
10+01	SB	5,525	3.33	3.57	1.0
10+50	NB	5,850	3.37	3.50	1.0
11+05	SB	6,325	3.61	3.40	0
11+48	NB	6,325	3.98	3.40	0
12+00	SB	4,775	3.36	3.76	1.0
12+49	NB	6,450	3.46	3.38	0
13+02	SB	7,400	3.64	3.21	0
13+49	NB	7,275	3.93	3.23	0
14+00	SB	7,725	3.12	3.17	1.0
14+50	NB	9,625	4.49	2.92	0
15+42	SB	10,900	4.24	2.79	0
UP-BNSF CROSSING					
16+01	SB	11,800	5.01	2.71	0
16+48	NB	9,700	4.99	2.91	0
17+00	SB	10,400	4.36	2.84	0
17+48	NB	8,525	4.15	3.05	0
18+00	SB	9,975	4.38	2.88	0
18+49	NB	7,925	4.44	3.14	0
19+02	SB	8,850	4.21	3.01	0
19+50	NB	6,875	5.11	3.30	0
20+01	SB	9,750	4.25	2.91	0

TABLE II
SUMMARY OF FWD STRUCTURAL CAPACITY DETERMINATION
Project No. 11-1-470

STATION	LANE	M _R (psi)	SN _{exist}	SN _{design}	Rqd HMA Overlay (in)
20+50	NB	8,800	4.37	3.01	0
21+01	SB	8,200	3.28	3.10	0
21+50	NB	8,675	4.42	3.03	0
22+00	SB	8,250	3.79	3.09	0
22+49	NB	8,100	4.40	3.11	0
23+02	SB	5,950	3.77	3.48	0
23+49	NB	7,000	4.26	3.28	0
24+01	SB	4,925	3.75	3.72	0
24+49	NB	7,850	4.35	3.15	0
25+03	SB	7,225	3.72	3.24	0
25+50	NB	9,400	4.38	2.95	0
26+04	SB	7,400	3.69	3.21	0
26+50	NB	8,250	4.11	3.09	0
27+00	SB	7,400	3.60	3.21	0
27+49	NB	9,375	4.20	2.95	0
28+01	SB	7,475	6.36	3.20	0
28+49	NB	7,575	4.23	3.19	0
29+03	SB	9,375	3.84	2.95	0
29+50	NB	6,725	4.06	3.33	0
30+03	SB	8,100	3.80	3.11	0
30+49	NB	8,800	4.37	3.02	0
31+00	SB	8,000	3.90	3.13	0
31+50	NB	8,325	4.03	3.08	0
32+01	SB	9,375	3.50	2.95	0
32+49	NB	10,900	3.52	2.79	0
33+01	SB	10,800	3.64	2.80	0
33+49	NB	8,900	4.30	3.01	0
34+00	SB	8,900	3.64	3.01	0
34+48	NB	7,500	3.82	3.20	0
35+02	SB	7,975	4.02	3.13	0
35+49	NB	6,600	3.57	3.35	0
36+02	SB	6,875	3.30	3.30	0
36+50	NB	5,800	3.51	3.51	0
37+01	SB	4,875	3.73	3.73	1.0

0+00 Station 0+00 occurs at centerline of 62nd Avenue.
 SB FWD test taken in outside wheel path of southbound lane.
 NB FWD test taken in outside wheel path of northbound lane.
 M_R Subgrade resilient modulus
 SN_{exist} Existing Asphalt Pavement Structural Number
 SN_{design} Required Design Structural Number

APPENDIX A

DARWin™ PAVEMENT DESIGN CALCULATIONS

1993 AASHTO Pavement Design

DARWin Pavement Design and Analysis System

**A Proprietary AASHTOWare
Computer Software Product**

Kumar & Associates, Inc
2390 South Lipan Street
Denver, Colorado 80223

Flexible Structural Design Module

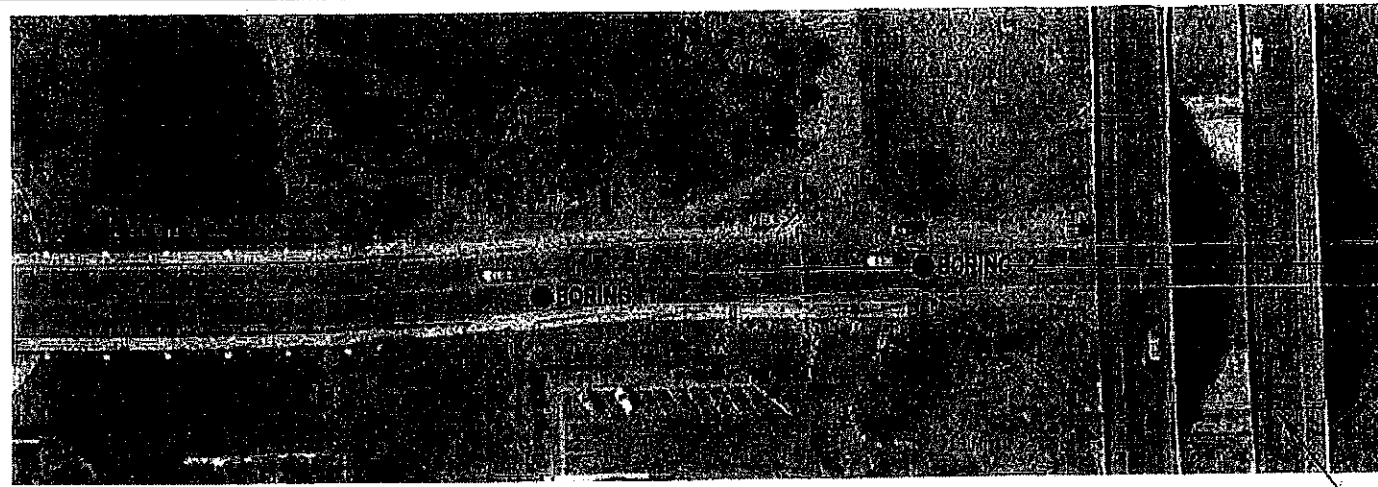
Lowell Boulevard Widening and Reconstruction
Clear Creek to 62nd Avenue

Flexible Structural Design

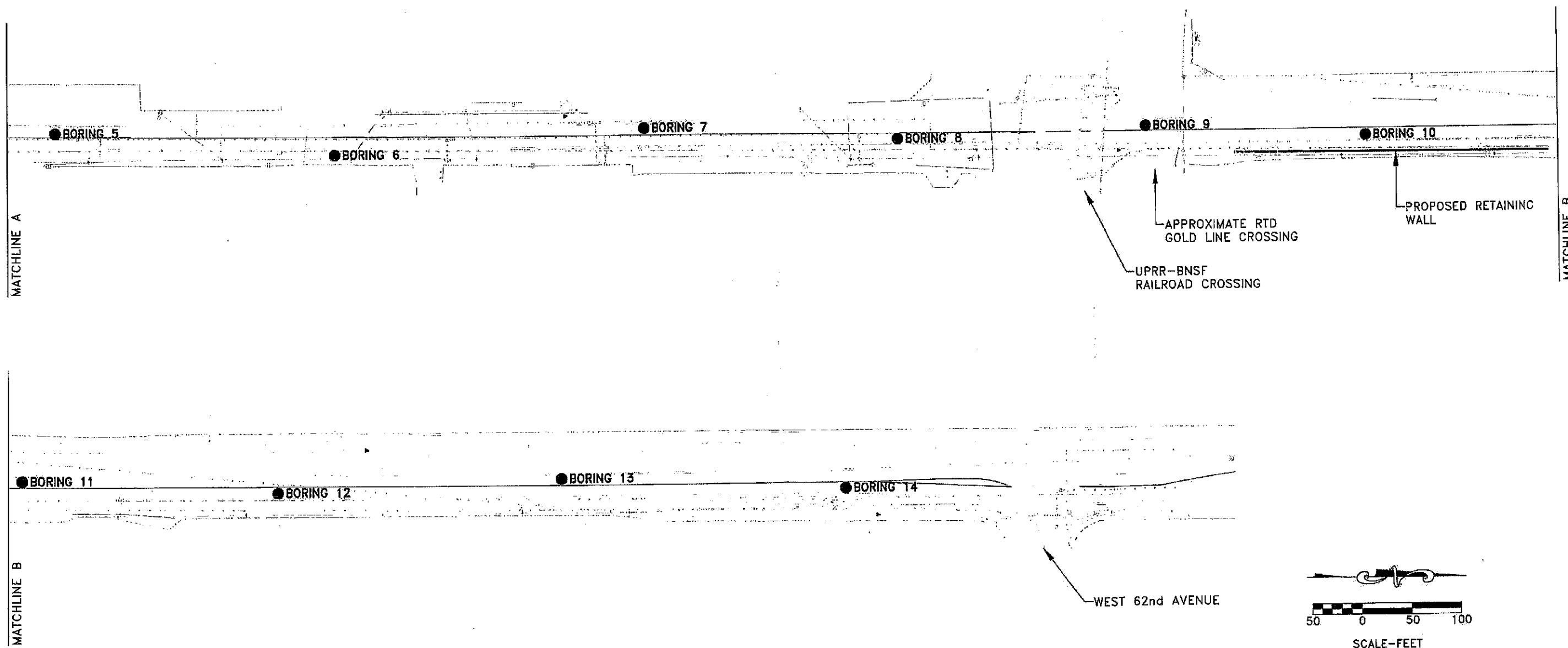
18-kip ESALs Over Initial Performance Period	730,000
Initial Serviceability	4.5
Terminal Serviceability	2.5
Reliability Level	90 %
Overall Standard Deviation	0.44
Roadbed Soil Resilient Modulus	4,940 psi
Stage Construction	1
Calculated Design Structural Number	3.71 in

Specified Layer Design

<u>Layer</u>	<u>Material Description</u>	<u>Struct Coef. (A₁)</u>	<u>Drain Coef. (M₁)</u>	<u>Thickness (D₁)(in)</u>	<u>Width (ft)</u>	<u>Calculated SN (in)</u>
1	Full-Depth Hot Mix Asphalt	0.4	1	9.5	-	3.80
Total	-	-	-	9.50	-	3.80



I-76 OVERPASS BRIDGE
STRUCTURE



September 22, 2016 - 10:37am
V:\Projects\2011\11-1-470\Drawings\11-1-470-01.dwg

11-1-470

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LOWELL BOULEVARD FROM CLEAR CREEK TO 62nd AVENUE

LOCATION OF EXPLORATORY BORINGS

Fig. 1

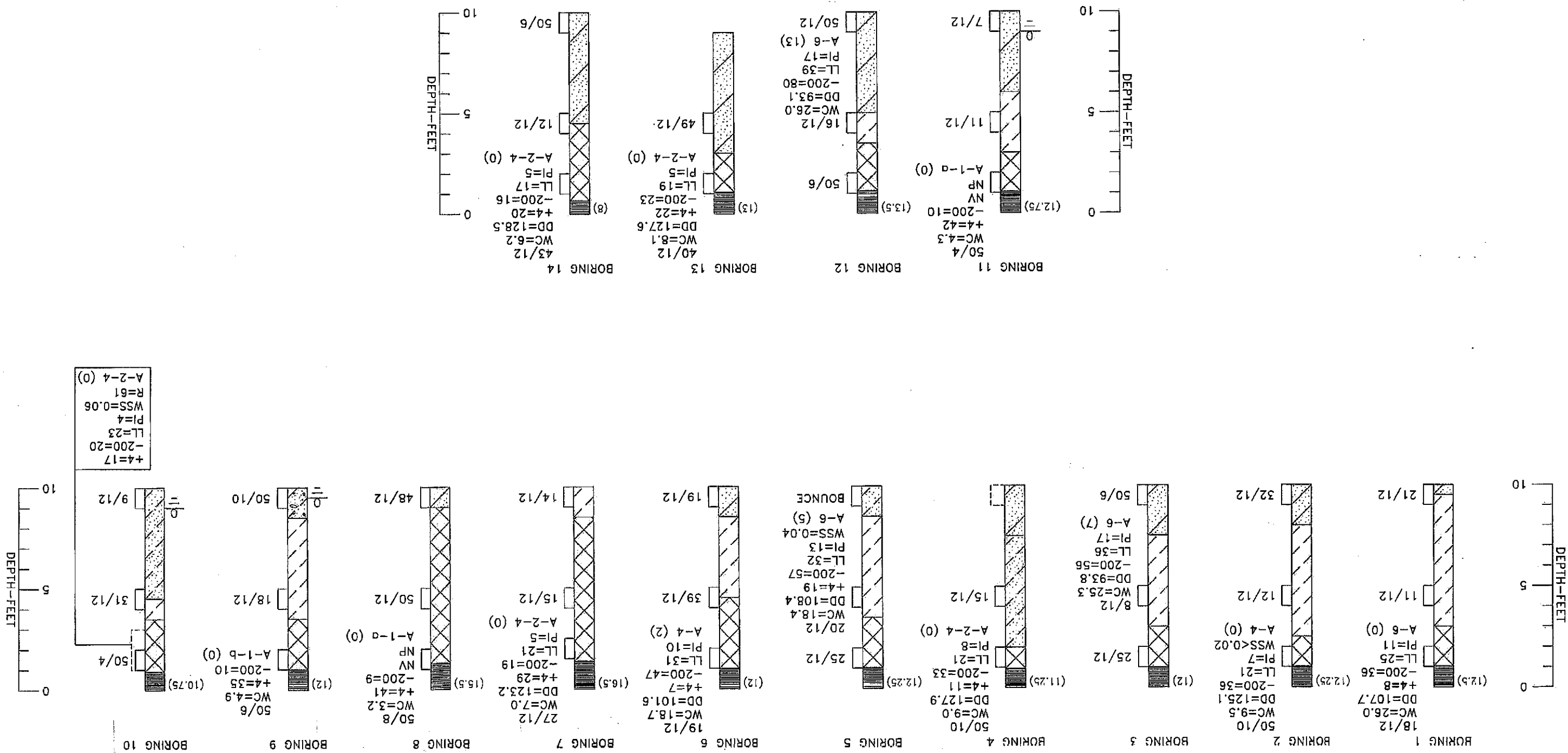
11-1-470

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









LOWELL BOULEVARD FROM CLEAR CREEK TO 62nd AVENUE

LOGS OF EXPLORATORY BORINGS

Fig. 2



LEGEND

- (12.5)  ASPHALT, THICKNESS IN INCHES SHOWN IN PARENTHESES TO LEFT OF THE LOG.
-  FILL: SILTY CLAYEY SAND (SC-SM) TO POORLY GRADED SAND WITH SILTY CLAY AND GRAVEL (SP-SC), FINE TO COARSE GRAINED WITH VARIABLE GRAVEL CONTENT, MOIST, LIGHT TO DARK BROWN.
-  SANDY LEAN CLAY (CL), FINE TO COARSE GRAINED WITH OCCASIONAL GRAVEL, STIFF TO VERY STIFF, MOIST, BROWN.
-  SILTY, CLAYEY GRAVEL WITH SAND (GC-GM), FINE TO COARSE VERY DENSE, MOIST, BROWN.
-  CLAYEY SAND WITH CLAY LENSES (SC), FINE TO COARSE GRAINED, MEDIUM DENSE, MOIST, LIGHT BROWN.
-  SILTY SAND WITH GRAVEL (SM) TO POORLY GRADED SAND WITH SILT AND GRAVEL (SP-SM), FINE TO COARSE GRAINED, MEDIUM DENSE TO VERY DENSE, SLIGHTLY MOIST TO MOIST, LIGHT BROWN.
-  DRIVE SAMPLE, 2-INCH I.D. CALIFORNIA LINER SAMPLE.
- 18/12  DRIVE SAMPLE BLOW COUNT. INDICATES THAT 18 BLOWS OF A 140-POUND HAMMER FALLING 30 INCHES WERE REQUIRED TO DRIVE THE SAMPLER 12 INCHES.
-  DISTURBED BULK SAMPLE.
-  DEPTH TO WATER LEVEL ENCOUNTERED AT THE TIME OF DRILLING.

NOTES

1. THE EXPLORATORY BORINGS WERE DRILLED ON NOVEMBER 22, 2011 WITH A 4-INCH DIAMETER CONTINUOUS FLIGHT POWER AUGER.
2. THE LOCATIONS OF THE EXPLORATORY BORINGS WERE MEASURED APPROXIMATELY BY PACING FROM FEATURES SHOWN ON THE SITE PLAN PROVIDED.
3. THE ELEVATIONS OF THE EXPLORATORY BORINGS WERE NOT MEASURED AND THE LOGS OF THE EXPLORATORY BORINGS ARE PLOTTED TO DEPTH.
4. THE EXPLORATORY BORING LOCATIONS SHOULD BE CONSIDERED ACCURATE ONLY TO THE DEGREE IMPLIED BY THE METHOD USED.
5. THE LINES BETWEEN MATERIALS SHOWN ON THE EXPLORATORY BORING LOGS REPRESENT THE APPROXIMATE BOUNDARIES BETWEEN MATERIAL TYPES AND THE TRANSITIONS MAY BE GRADUAL.
6. GROUND WATER LEVELS SHOWN ON THE LOGS WERE MEASURED AT THE TIME AND UNDER CONDITIONS INDICATED. FLUCTUATIONS IN THE WATER LEVEL MAY OCCUR WITH TIME.
7. LABORATORY TEST RESULTS:
WC = WATER CONTENT (%) (ASTM D 2216);
DD = DRY DENSITY (pcf) (ASTM D 2216);
+4 = PERCENTAGE RETAINED ON NO. 4 SIEVE (ASTM D 422);
-200 = PERCENTAGE PASSING NO. 200 SIEVE (ASTM D 1140);
LL = LIQUID LIMIT (ASTM D 4318);
PI = PLASTICITY INDEX (ASTM D 4318);
R = HVEEM R-VALUE (AT 300 psi) (ASTM D 2844);
WSS = WATER SOLUBLE SULFATES (%) (AASHTO T 290);
A-B (0) = AASHTO CLASSIFICATION (GROUP INDEX) (AASHTO M 145).



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
DENVER REGULATORY OFFICE, 9307 SOUTH WADSWORTH BOULEVARD
LITTLETON, COLORADO 80128-6901

November 17, 2017

SUBJECT: Nationwide Permit 14 Verification – Corps File No. NWO-2016-02437-DEN,
Lowell Boulevard Project, Adams County, CO

Ms. Jennifer Shi
Adams County Transportation
4430 South Adams County Parkway
Brighton, CO 80601

Dear Ms. Shi:

This letter is in reference to the proposed Lowell Boulevard Improvements Project, located at approximately 39.805°N, -104.035°W, in Adams County, Colorado. The work as described in your submittal involves road widening and culvert construction on Lowell Boulevard. The project will cause permanent and temporary impacts to 0.1 acre of waters of the United States.

Based on the information provided, this office has determined that the work is authorized by the Department of the Army Nationwide Permit (NWP) 14 - Linear Transportation Projects, found in the January 6, 2017, Federal Register. Enclosed is a fact sheet, which fully describes this Nationwide Permit and lists the General Conditions, and Colorado Regional Conditions, which must be adhered to for this authorization to remain valid.

An approved jurisdictional determination (AJD) has been completed for this project. The AJD is attached to this letter. The Corps has determined that the ditch, as well as Wetland 2 and 3 are waters of the U.S. Other potential aquatic resources, including Pond, Wetland 1, Wetland 4 and Wetland 5, have been determined not to be waters of the U.S. This AJD is valid for a period of five years from the date of this letter, unless new information warrants revisions of the AJDs before the expiration date, or unless the Corps has identified, after a possible public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis. If you are not in agreement with the AJD decision, you may request an administrative appeal under regulation 33 CFR 331, by using the attached Appeal Form and Administrative Appeal Process form. The request for appeal must be received within 60 days from the date of this letter. If you would like more information on the jurisdictional appeal process, contact this office. It is not necessary to submit a Request for Appeal if you do not object to the AJD.

Although an Individual Department of the Army permit will not be required for this work, this does not eliminate the requirement that any other applicable federal, state, tribal or local permits be obtained as required. Please be advised that deviations from the original plans and specifications of this project could require additional authorization from this office.

The applicant is responsible for all work accomplished in accordance with the terms and conditions of the nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by the nationwide permit on behalf of the applicant, it is strongly recommended that they be provided a copy of this letter and the enclosed conditions so that they are aware of the limitations of the applicable nationwide permit. Any activity which fails to comply with all

the terms and conditions of the nationwide permit will be considered unauthorized and subject to appropriate enforcement action.

This nationwide permit verification will be valid until March 18, 2022. In compliance with General Condition 30, the enclosed "Certification of Completed Work" form (blue) must be signed and returned to this office upon completion of the authorized work and any required mitigation.

If there are any questions please contact Aaron Eilers at (303) 979-4120 or by e-mail at Aaron.R.Eilers@usace.army.mil, and reference Corps File No. NWO-2016-02437-DEN.

Sincerely,



Aaron R. Eilers
Chief, Denver Regulatory Office
U.S. Army Corps of Engineers

Enclosure(s)

Nationwide Permit 14 Fact Sheet
Approved Jurisdictional Determination (November 17, 2017)
Approved Jurisdictional Determination Appeal Form
Approved Jurisdictional Determination Appeal Form Instructions
Certification of Completed Work

Copies Furnished:

U.S. Fish and Wildlife Service
Colorado Department of Public Health and Environment
Environmental Protection Agency
Colorado Parks and Wildlife

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 17, 2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Denver Regulatory Office, Omaha District, Lowell Boulevard Project, NWO-2016-02437-DEN

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: CO County/parish/borough: Adams City:
Center coordinates of site (lat/long in degree decimal format): Lat. 39.805 ° N; Long. -104.035° W
Universal Transverse Mercator: 497003.886175 and 4406004.090533

Name of nearest waterbody: Clear Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Clear Creek

Name of watershed or Hydrologic Unit Code (HUC): HUC 12 - 101900040404

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☒ Office (Desk) Determination. Date: November 17, 2017
☒ Field Determination. Date(s): November 17, 2017

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- ☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
☐ Non-RPWs that flow directly or indirectly into TNWs
☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 0.05 acres.
Wetlands: 0.05 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Reference is made to the November 13, 1986 Federal Register (Page 41217), Part 328 (a) "Non-tidal drainage and irrigation ditches excavated on dry land." The Corps of Engineers generally does not consider these types of aquatic resources waters of the U.S. except on a case-by-case basis. In this case, Wetlands 5 was created by excavating dry land, and terminates in an upland and is not a water of the United States.

Pond, Wetland 1 and Wetland 4 were determined not to be aquatic resources and are not waters of the United States.

The Kershaw Ditch was previously determined to be non-jurisdictional and has been abandoned. The Kershaw Ditch is no longer an aquatic resource (Corps File No. NWO-2015-00315-DEN)

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

³ Supporting documentation is presented in Section III.F.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

(i) **General Area Conditions:**

Watershed size: Central Pond, East Pond are excavated gravel pits with exposed groundwater which are hydrologically connected to an unnamed ditch which flows approximately 2500 feet before discharging into Clear Creek, a TNW. The watershed/drainage area is approximately 10 acres in size and is heavily altered due to the presence of industrial and transportation facilities, as well as other abandoned gravel pits in the area.

Drainage area: Central Pond, East Pond are excavated gravel pits with exposed groundwater which are hydrologically connected to an unnamed ditch which flows approximately 2500 feet before discharging into Clear Creek, a TNW. The watershed/drainage area is approximately 10 acres in size and is heavily altered due to the presence of industrial and transportation facilities, as well as other abandoned gravel pits in the area.

Average annual rainfall: 15 inches

Average annual snowfall: 80 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

☒ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

(b) **General Tributary Characteristics (check all that apply):**

Tributary is:

☐ Natural

☒ Artificial (man-made). Explain: **Unnamed Ditch 2 is an excavated ditch which drains exposed groundwater providing hydrology to Central Pond and East Pond and flows directly into Clear Creek.**

☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: 6 feet

Average depth: 3 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

☐ Silts

☒ Sands

☐ Concrete

☐ Cobbles

☐ Gravel

☐ Muck

☐ Bedrock

☐ Vegetation. Type/% cover: .

☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Stable.**

Presence of run/riffle/pool complexes. Explain: **None.**

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): **less than 1 %**

(c) **Flow:**

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime: **The flow in the channel is relatively permanent.**

Other information on duration and volume: **Flow in the Unnamed Ditch 2 is based primarily on fluctuating groundwater discharges from Central Pond and East Pond.**

Surface flow is: **Discrete and confined.** Characteristics: .

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Subsurface flow: **Unknown**. Explain findings:

☐ Dye (or other) test performed:

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM⁶ (check all indicators that apply):

☐ clear, natural line impressed on the bank

☐ changes in the character of soil

☐ shelving

☐ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☐ sediment deposition

☐ the presence of litter and debris

☐ destruction of terrestrial vegetation

☐ the presence of wrack line

☐ sediment sorting

☐ scour

☐ multiple observed or predicted flow events

☐ water staining

☐ abrupt change in

plant community

☐ other (list):

☐ Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ tidal gauges

☐ other (list):

☐ Mean High Water Mark indicated by:

☐ survey to available datum;

☐ physical markings;

☐ vegetation lines/changes in vegetation types.

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: **Water is clear.**

Identify specific pollutants, if known:

(iv) **Biological Characteristics. Channel supports (check all that apply):**

☐ Riparian corridor. Characteristics (type, average width):

☐ Wetland fringe. Characteristics:

☐ Habitat for:

☐ Federally Listed species. Explain findings:

☐ Fish/spawn areas. Explain findings:

☐ Other environmentally-sensitive species. Explain findings:

☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: **0.10** acres

Wetland type. Explain: **PEM.**

Wetland quality. Explain: **Poor.**

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow.** Explain:

Surface flow is: **Discrete and confined**

Characteristics:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Subsurface flow: Unknown. Explain findings:

☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: The wetlands flow through a culvert into the unnamed ditch.

☐ Ecological connection. Explain:

☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 1-2 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 2-year or less floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: clear.

Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width):

☐ Vegetation type/percent cover. Explain:

☐ Habitat for:

☐ Federally Listed species. Explain findings:

☐ Fish/spawn areas. Explain findings:

☐ Other environmentally-sensitive species. Explain findings:

☐ Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: 1

Approximately (0.10) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

N

Size (in acres)

0.10

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: The wetlands adjacent to the unnamed ditch are very small and provide limited biological, chemical or physical functions to the ditch or to Clear Creek.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **Previously, (Corps File No. NWO-2015-00315-DEN), the Corps determined that the unnamed ditch was tributary to Clear Creek, a TNW, and is jurisdictional. The wetlands adjacent to the unnamed ditch, though small, connect to the ditch through a culvert and ultimately discharge water into Clear Creek, approximately 2 miles downstream. Based on a review of the aquatic resource, including desktop and on-site visits, the Corps has determined that the wetland and the tributary have the capacity to carry pollutants or floodwaters to a TNW, reduce the amount of pollutants or flood waters reaching a TNW, and have the capacity to transfer nutrients and organic carbon that support downstream foodwebs. Therefore, the wetlands have a significant nexus to the nearest TNW.**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
 Identify type(s) of waters: .

3. **Non-RPWs* that flow directly or indirectly into TNWs.**
☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.

*See Footnote # 3.

Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
- ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: . acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: . acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: 0.10 acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: . linear feet . width (ft).
- ☐ Other non-wetland waters: . acres.
- Identify type(s) of waters: .
- ☐ Wetlands: . acres.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following *Rapanos*.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
- ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other: (explain, if not covered above): Reference is made to the November 13, 1986 Federal Register (Page 41217), Part 328 (a) "Non-tidal drainage and irrigation ditches excavated on dry land." The Corps of Engineers generally does not consider these types of aquatic resources waters of the U.S. except on a case-by-case basis. In this case, Wetlands 5 was created by excavating dry land, and terminates in an upland and is not a water of the United States.

Pond, Wetland 1 and Wetland 4 were determined not to be aquatic resources and are not waters of the United States.

The Kershaw Ditch was previously determined to be non-jurisdictional and has been abandoned. The Kershaw Ditch is no longer an aquatic resource (Corps File No. NWO-2015-00315-DEN)

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

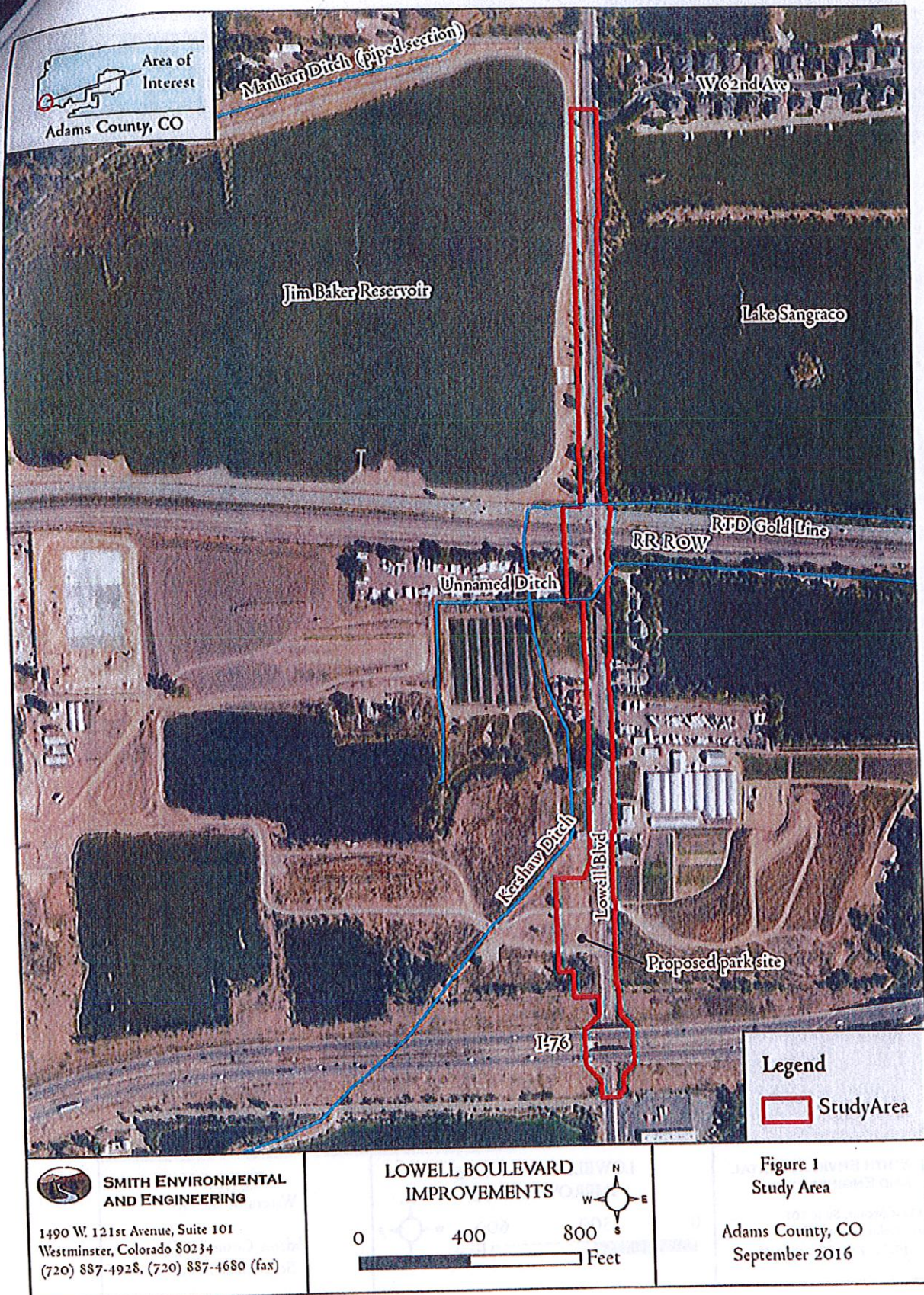
Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

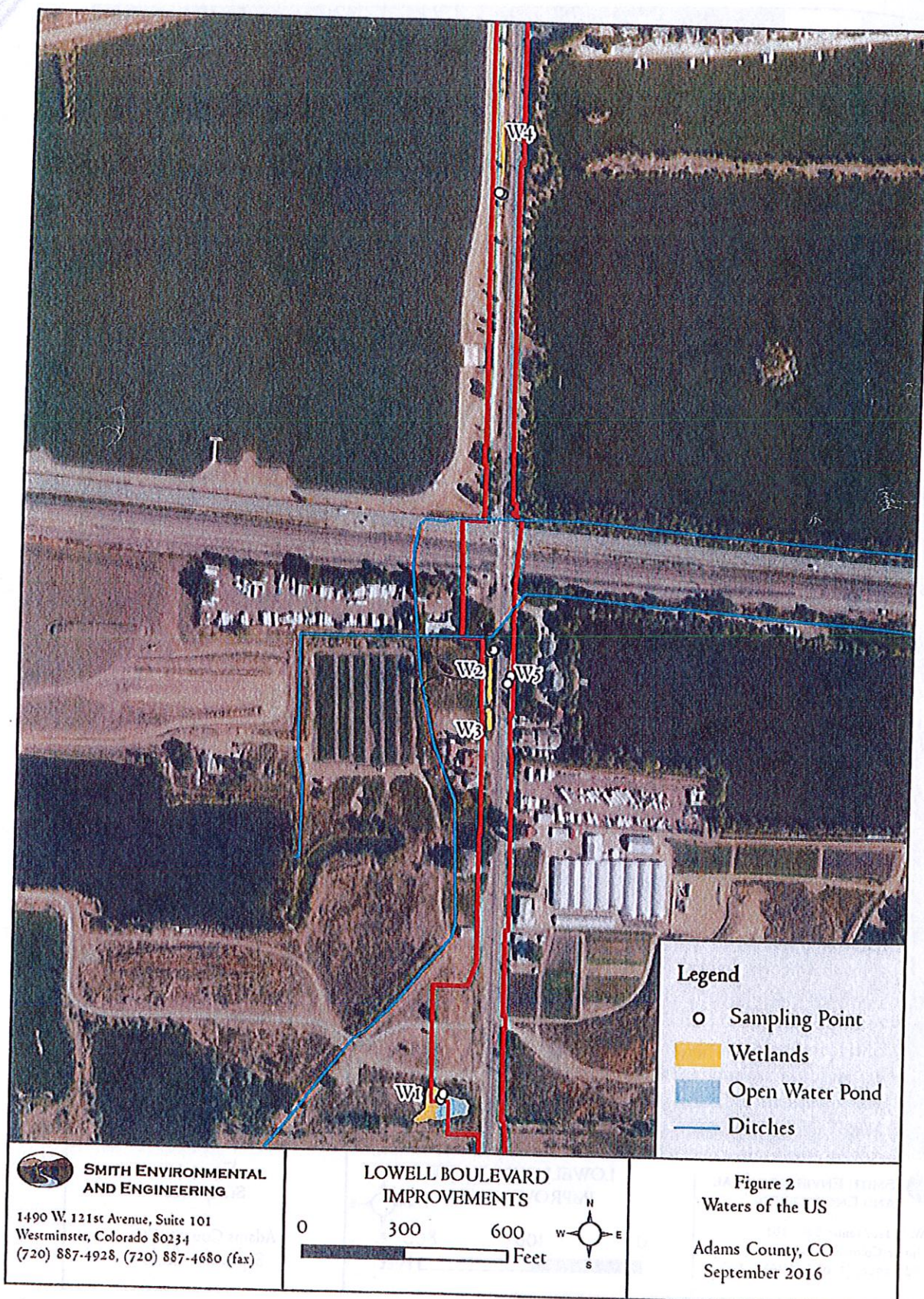
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Wetland Delineation Report (August 18, 2017)
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☐ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☐ USGS NHD data.
- ☒ USGS 8 and 12 digit HUC maps. HUC 12 - 101900040404
- ☐ U.S. Geological Survey map(s). Cite scale & quad name:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth, 2017
- or ☒ Other (Name & Date): Figures 1 and 2 provided by consultant
- ☐ Previous determination(s). File no. and date of response letter: .
- ☒ Applicable/supporting case law: Rapanos and Carabell cases.
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Figure 1 - Study Area; Figure 2 - Waters of the U.S. Map





NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Adams County	File Number: NWO-2016-02437-DEN	Date: November 17, 2017
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
x	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found in Corps regulations at 33 CFR Part 331, or at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

If you only have questions regarding the appeal process you may also contact:

US Army Corps of Engineers, Northwestern Division
Attn: Melinda Witgenstein, Regulatory Appeals Review Officer
1201 NE Lloyd Blvd Ste 400
Portland, OR 97232-1257 Telephone (503) 808-3888
Melinda.M.Witgenstein@usace.army.mil

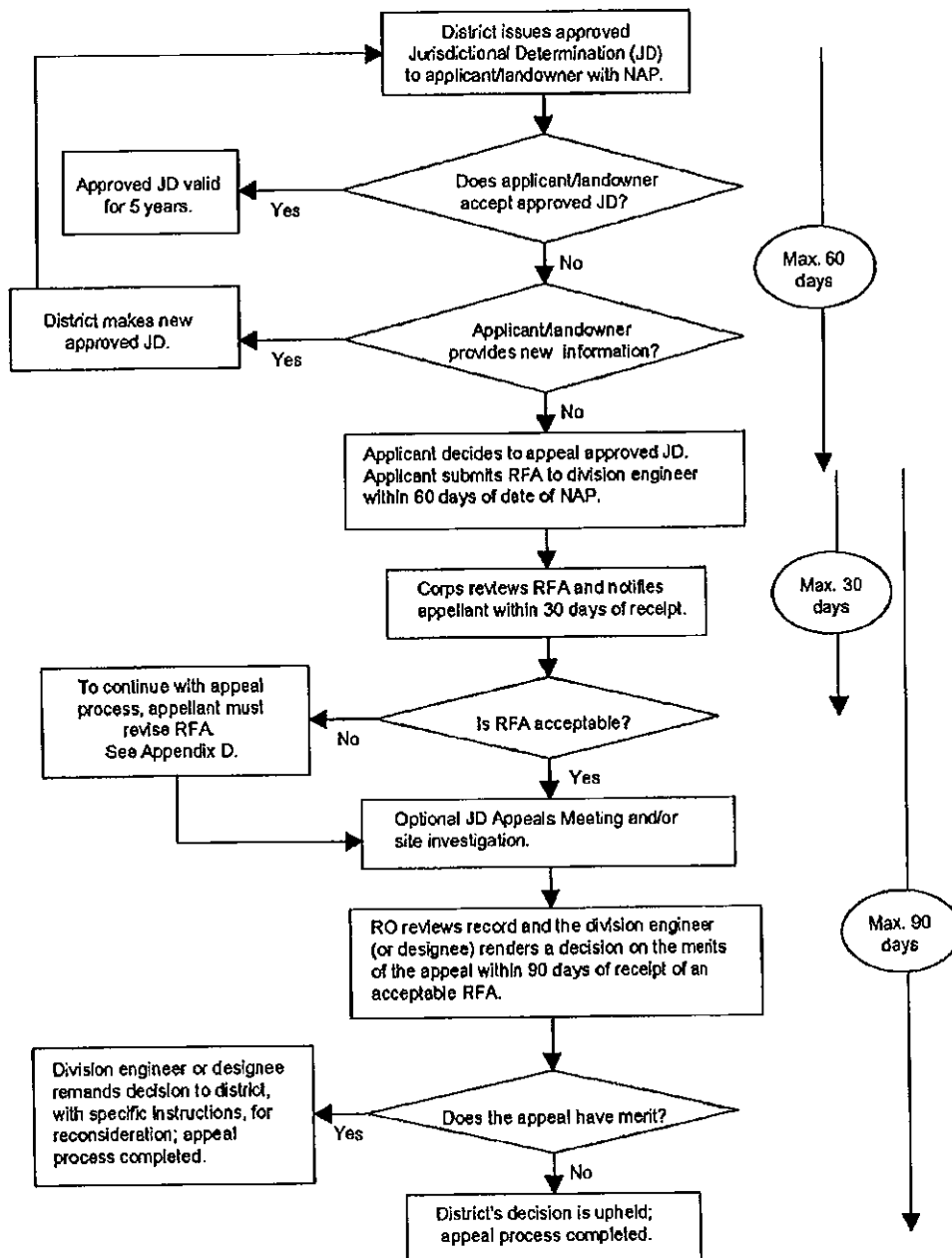
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

Certification of Completed Work

Corps File Number: _____

Name of Permittee: _____

Date of Issuance: _____

Expiration Date: _____

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U. S. Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Blvd.
Littleton, Colorado 80128-6901

Phone (303) 979-4120
Fax (303) 979-0602

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.¹

Signature of Permittee

¹ If your permit included wetlands monitoring and annual reports, these activities will continue after submittal of this form until you are notified by the Denver Regulatory Office that your mitigation is successful and monitoring reports are no longer required.

Nationwide Permit 14

Linear Transportation Projects

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States.

Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.)

(Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will

evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/ or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements.

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas.

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas.

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds.

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material.

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes.

No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects from Impoundments.

If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows.

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls.

Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills.

Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance.

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project.

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers.

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights.

No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre- construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non- Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species- specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word

“harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

(a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on,

determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre- construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre- construction notification, the district engineer may determine on a case-by- case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
- (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than

minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns.

Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring

requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management.

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications.

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

_____ (Transferee) _____ (Date)

30. Compliance Certification.

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.
- (8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map

indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of

property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre- construction notifications to expedite agency coordination.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

2017 Regional Conditions to Nationwide Permits in the State of Colorado

Regional Conditions Applicable to All Nationwide Permits within the State of Colorado

1. Important Spawning Areas. Activities are not authorized by any nationwide permit except after case-by- case review and consultation with Colorado Parks and Wildlife (CPW) if the activities would adversely affect important spawning areas or would be conducted in these waters during trout and Kokanee spawning seasons. Bio-engineering techniques, such as native riparian shrub plantings, are required for all bank protection activities that exceed 50 linear feet in important spawning areas. For activities located in these important spawning areas, PCN is required and consultation with CPW must be conducted in accordance with the timeframes established in GC 32 (Pre-Construction Notification). Important spawning areas are considered Gold Medal Waters in Colorado (Attachment 2).

NOTE: Pre-application consultation with the CPW, preferably on-site, is highly recommended. Providing documentation of pre-application consultation with CPW, stating that CPW has reviewed the proposed project and has no concerns, will be helpful in project evaluation by the Corps. Please visit the following state website to determine the appropriate CPW office for coordination: <http://cpw.state.co.us>.

2. Fens. All nationwide permits, with the exception of 3, 5, 6, 20, 27, 32, 37, and 38, are revoked for activities located in fens and wetlands adjacent to fens. PCN is required for activities proposed for authorization by Nationwide Permits. The PCN will address potential adverse

effects to fen hydrology. The permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal.

A fen is defined as a groundwater-fed wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_053171.pdf.

Note: A fen may be part of a larger aquatic system (fen complex) where wetlands and other waters adjacent to the fen may provide a critical source of hydrology necessary for sustaining the fen.

3. Springs. PCN is required for all Nationwide Permits if the activities occur within 100 feet of the discharge point of a spring. The Corps will determine if the proposed project will have more than a minimal effect to the spring and may require an Individual Permit or project modification to reduce/eliminate the spring impacts. For the purposes of this regional condition, a spring is defined as any location where groundwater flow emanates from a distinct point. Springs do not include seeps or other groundwater discharge areas where there is no distinct point source.

4. Suitable Fill. A PCN is required for the use of broken concrete as fill material within the State of Colorado. Permittees must demonstrate that soft engineering methods utilizing native or non-man made materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete is allowed as suitable fill. Use of broken concrete with exposed rebar is prohibited.

ADDITIONAL INFORMATION

The following additional information relates to minimization of impacts to jurisdictional waters of the United States and compliance with the General Conditions:

1. Permittees are reminded that appropriate erosion and sediment controls are required in accordance with GC No. 12 in order to properly stabilize the site and prevent erosion and siltation into wetlands and other waters downstream. Streambed material or other small aggregate material placed alone for bank stabilization will not meet GC No. 12.

2. Permittee best management practices. In order to prevent the spread of invasive and/or nuisance species (e.g., Asian Clam, Grand Valley Asian Tapeworm, Green River Mud Snail, New Zealand Mud Snail), the permittee is strongly encouraged to clean heavy equipment prior to and after construction if the equipment was previously used in another stream, river, lake, pond or wetland within 10 days of initiating work. The following are recommended methods for preventing the spread of invasive aquatic organisms:

Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with a 1:15 solution of disinfection solution containing the following ingredients:

- Dialkyl dimethyl ammonium chloride (5-10% by weight);
- Alkyl dimethyl benzyl ammonium chloride (5-10% by weight);
- Nonyl phenol ethoxylate (5-10% by weight);
- Sodium sesquicarbonate (1-5%); and,
- Tetrasodium ethylene diaminetetraacetate (1-15%)

The equipment should be kept moist for at least 10 minutes, and rinsate should be managed as a solid waste in accordance with local, county, state, or federal regulations. Alternately, equipment, hand tools, boots and any other equipment that was previously used in a river, stream, lake, pond, or wetland prior to moving the equipment to another water body may be disinfected using the following methods:

- Spray/soak equipment with water greater than 140 degrees Fahrenheit for at least 10 minutes.
- Sanitize water suction hoses and water transportation tanks (using methods described above) and discard rinse water at an appropriately permitted disposal facility.

3. Designated Critical Resource Waters. Within the State of Colorado, the waters listed in **Attachment 1** are designated as Critical Resource Waters. In accordance with GC 22, the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters or their adjacent wetlands: NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, A and B. In addition, in accordance with GC 32, notification to the DE is required for the use of the following nationwide permits in these waters and their adjacent wetlands: NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38.

4. Gold Medal Waters. Within the State of Colorado, the waters listed in **Attachment 2** are designated as Gold Medal Waters. Requirements for projects located in these waters and their adjacent wetlands are set forth in RC 5 above.

ATTACHMENT 1

DESIGNATED CRITICAL RESOURCE WATERS

The Colorado Water Quality Control Division designates Critical Resource Waters (Outstanding Waters) within the State of Colorado. Please note that the following list is subject to change and typically changes on an annual basis. For the most current list, or for more information on specific designations within these watersheds and their tributaries, please refer to the Colorado Water Quality Control Commission website: <https://www.colorado.gov/pacific/cdphe/wqcc> or Water Quality Control Division's website: <https://www.colorado.gov/pacific/cdphe/clean-water-gis-maps>

Animas and Florida River Basins. All tributaries to the Animas River and Florida River, including all wetlands, which are within the Weminuche Wilderness Area.

Hermosa Creek, including all tributaries, from the source to immediately below the confluence with Long Hollow, except for the East Fork of Hermosa Creek.

All lakes and reservoirs tributary to the Animas River and Florida River which are within the Weminuche Wilderness Area. This segment includes Lillie Lake, Castilleja Lake, City Reservoir, Emerald Lake, Ruby Lake, Balsam Lake, Garfield Lake, Vestal Lake, Eldorado Lake, Highland Mary Lakes, Verde Lakes, Lost Lake, and Crater Lake.

Bear Creek Basin. The main stem of Bear Creek and all tributaries, lakes, and reservoirs, including wetlands, within the Mt. Evans Wilderness Area.

Big Thompson River Basin. The main stem of the Big Thompson River, including all tributaries, lakes, reservoirs, and wetlands, located within Rocky Mountain National Park (RMNP).

Blue River Basin. North Fork of the Swan River, including all tributaries and wetlands, from the source to the confluence with the Swan River.

All tributaries to the Blue River, including wetlands within the Eagle Nest and Ptarmigan Peak Wilderness Areas.

All lakes and reservoirs within the Eagle Nest and Ptarmigan Peak Wilderness Areas.

Boulder Creek Basin. All tributaries to Boulder Creek, including lakes, reservoirs, and wetlands, located within the Indian Peaks Wilderness Area.

Cache la Poudre River Basin. All tributaries to the Cache La Poudre River, including lakes, reservoirs, and wetlands, located within RMNP and Rawah, Neota, Comanche Peak, and Cache La Poudre Wilderness Areas.

Clear Creek Basin. All tributaries to Clear Creek, including lakes, reservoirs, and wetlands, located within Mt. Evans Wilderness Area.

San Luis Valley (Closed Basin). All tributaries in the Closed Basin, including wetlands, lakes, and reservoirs, located within the La Garita Wilderness Area.

The main stem of Sand Creek, including all tributaries and wetlands, from the source to the mouth. The main stem of Medano Creek, including all tributaries and wetlands, from the source to the mouth

Colorado River Basin. The main stem of the Colorado River, including all tributaries and wetlands, located within or flowing into RMNP.

All tributaries to the Colorado River and Frasier River within RMNP and within the Never Summer, Indian Peaks, Byers, Vasquez, Eagles Nest, and Flat Top Wilderness Areas.

Main stem of Northwater Creek and Trapper Creek, including all tributaries and wetlands, from their source to the confluence with the East Fork of Parachute Creek. East Middle Fork of Parachute Creek, including all tributaries and wetlands from the source to the confluence with Middle Fork of Parachute Creek.

Battlement Creek, including all tributaries and wetlands, from its source to a point immediately downstream boundary of BLM lands.

Main stem of Rapid Creek, including all tributaries and wetlands, from the source to a point immediately below the confluence with Cottonwood Creek including Kruzen Springs.

Dolores River Basin. All tributaries to the Dolores River and West Dolores River, including all wetlands, tributaries, which are within the Lizard Head Wilderness area, main stem of Rio Lado from the source to the confluence with the Dolores River. Main stem of Spring Creek from the source to the confluence with Stoner Creek. Main stem of Little Taylor Creek from the source to the confluence with Taylor Creek.

All lakes, and reservoirs tributary to the Dolores River and West Dolores River, which are within the Lizard Head Wilderness area. This segment includes Navajo Lake.

Eagle River Basin. All tributaries to the Eagle River system, including lakes, reservoirs, and wetlands, located within the Eagle Nest and Holy Cross Wilderness Areas of the Gore Range.

Abrams Creek, including all tributaries and wetlands, from the source to the eastern boundary of the BLM lands.

Fountain Creek Basin. Severy Creek, including all tributaries, from the source to a point just upstream of where the Forest Service Road 330 crosses the stream.

Bear Creek, including all tributaries, from the source to a point upstream of GPS coordinated N3847682, W10454917 (this location is at elevation 8,200 feet above sea level at a 250 degree angle and 3,000 feet from the trailhead of the Mount Buckhorn Trail off High Drive).

Upper Gunnison River Basin. All tributaries to the Gunnison River, including and wetlands, within the La Garita, Powderhorn, West Elk, Collegiate Peaks, Maroon Bells, Fossil Ridge, or Uncompahgre Wilderness Areas.

All tributaries and wetlands from North Beaver Creek to Meyers Gulch, from the West Elk Wilderness boundary to their confluences with Blue Mesa Reservoir, Morrow Point Reservoir, or the Gunnison River, excluding Steuben Creek, North Willow Creek, and Soap Creek.

All lakes and reservoirs that are tributary to the Gunnison River and within the La Garita, Powderhorn, West Elk, Collegiate Peaks, Maroon Bells, Raggeds, Fossil Ridge, or Uncompahgre Wilderness Areas.

Lower Gunnison River Basin. All tributaries to the Smith Fork, including all wetlands, which are within the West Elk Wilderness Area.

All lakes and reservoirs tributary to the Smith Fork, and are within the West Elk Wilderness Area.

North Fork of the Gunnison River Basin. All tributaries to North Fork of the Gunnison River, including all wetlands, within the West Elk or Raggeds Wilderness Areas.

All lakes and reservoirs that are tributary to the North Fork of the Gunnison River and within the West Elk or Raggeds Wilderness areas.

Laramie River Basin. All tributaries to the Laramie River system, including lakes, reservoirs, and wetlands, located within the Rawah Wilderness Area.

Los Pinos River Basin. All tributaries to the Los Pinos River, including all wetlands, which are within the Weminuche Wilderness Area.

All lakes and reservoirs tributary to the Los Pinos River which are within the Weminuche Wilderness Area. This includes Granite Lake, Divide Lakes, Elk Lake, Flint Lakes, Moon Lake, Rock Lake, Betty Lake, Lost Lake, Hidden Lake, Vallecito Lake, Eldorado Lake, Trinity Lake, Leviathan Lake, Sunlight Lake, Hazel Lake, Columbine Lake, and Emerald Lake.

Mancos River Basin. All tributaries of the Mancos River located within Mesa Verde National Park.

North Fork of the Gunnison River Basin. All tributaries to North Fork of the Gunnison River, including lakes, reservoirs, and wetlands, located within the West Elk and Raggeds Wilderness Areas.

North Platte River Basin. All tributaries to the North Platte River and Encampment Rivers, including lakes and reservoirs.

All wetlands located within the Mount Zirkle, Never Summer, and Platte River Wilderness Areas.

Piedra River Basin. All tributaries to the Piedra River, including all wetlands, which are within the Weminuche Wilderness Area.

All lakes and reservoirs tributary to the Piedra River which are within the Weminuche Wilderness Area. This segment includes Window Lake, Monument Lake, Hossick Lake, and Williams Lakes.

Rio Grande Basin. All tributaries to the Rio Grande, including lakes, reservoirs, and wetlands, located within the Weminuche Wilderness Area.

Roaring Fork River. All tributaries of the Roaring Fork River system, including lakes and reservoirs, located within the Maroon Bells/Snowmass, Holy Cross, Raggeds, Collegiate Peaks, and Hunter/Fryingpan Wilderness Areas.

San Juan River Basin. All tributaries to the San Juan River, Rio Blanco, and Navajo River including all wetlands which are within the Weminuche Wilderness area and South San Juan Wilderness Area.

All lakes and reservoirs which are tributary to the San Juan River, Rio Blanco, and Navajo River and located within the Weminuche Wilderness Area and South San Juan Wilderness Area.

This segment includes Archuleta Lake, Spruce Lakes, Turkey Creek Lake, Fourmile Lake, Upper Fourmile Lake, Crater Lake, Quartz Lake, Fish Lake, and Opal Lake.

San Miguel River Basin. All tributaries, including wetlands, to the San Miguel River, and within the boundaries of the Lizard Head, or Mount Sneffels Wilderness Areas.

All lakes and reservoirs tributary to the San Miguel River and within the boundaries of the Lizard Head, or Mount Sneffels Wilderness Areas.

South Platte River Basin. All tributaries to the South Platte River, including lakes, reservoirs, and wetlands, located within the Lost Creek and Mt. Evans Wilderness Areas.

St. Vrain Creek Basin. All tributaries to St. Vrain Creek, including lakes, reservoirs, and wetlands, located within the Indian Peaks Wilderness Areas and RMNP.

Uncompahgre River Basin. All tributaries to the Uncompahgre River, including all wetlands, which are within the Mt. Sneffels or Uncompahgre Wilderness Areas.

All lakes and reservoirs tributary to the Uncompahgre River and within the Mt. Sneffels or Uncompahgre Wilderness Areas.

White River Basin. All tributaries to the White River, including lakes, reservoirs, and wetlands, located within the Flat Tops Wilderness Area, including Trapper's Lake.

Yampa River Basin. All tributaries to the Yampa River, including lakes, reservoirs, and wetlands, located within Zirkle, Flat Tops, and Sarvis Creek Wilderness Areas.

ATTCHMENT 2

GOLD MEDAL WATERS

The following list of important spawning areas has been defined as Gold Medal Waters by the State of Colorado. As a reminder, according to RC 5 above, PCN is required for all proposed nationwide permit activities in these waters; consultation with CPW must be conducted in accordance with the timeframes established in GC 32.

NOTE: This list of Gold Medal Waters is subject to change. For the most current list, please refer to the Colorado Parks and Wildlife (CPW) Colorado Fishing Brochure available on the CPW website (<http://cpw.state.co.us/aboutus/Pages/RegulationsBrochures.aspx>) Fishing Brochure or contact any CPW or Corps office in Colorado.

GOLD MEDAL LAKES:

North Delaney Butte Lake in Jackson County.

Spinney Mountain Reservoir in Park County.

Steamboat Lake in Routt County.

GOLD MEDAL STREAMS:

Animas River from Lightner Creek to Rivera Crossing Bridge.

Arkansas River from the confluence with the Lake Fork of the Arkansas, near Leadville, downstream to Parkdale at the Hwy 50 bridge crossing above the Royal Gorge.

Blue River from Dillon Reservoir Dam to Green Mountain Reservoir inlet; and From Green Mountain Reservoir dam to Colorado River confluence.

Colorado River from Fraser River to Troublesome Creek confluence. Also, the 24 mile reach from the confluence with Canyon Creek, at the mouth of Gore Canyon, downstream to the confluence of Rock Creek, near the town of McCoy.

Fryingpan River from Ruedi Reservoir dam to Roaring Fork River Confluence.

Gore Creek from Red Sandstone Creek to Eagle River confluence.

Gunnison River from the upper boundary of the Black Canyon of the Gunnison National Monument downstream to the confluence with the North Fork of the Gunnison River.

North Platte River from the Routt National Forest boundary to the Wyoming border.

Rio Grande from Farmer's Union Canal upstream to the upper boundary of Collier State Wildlife Area.

Roaring Fork River from the confluence with the Crystal River downstream to the confluence with the Colorado River.

South Platte River: The **Middle Fork** of the South Platte River downstream from U.S. Highway 285, the **South Fork** of the South Platte River downstream from the outlet at Antero Reservoir, and from the confluence of the **Middle and South Forks** of the South Platte River downstream to the inlet of Spinney Mountain Reservoir.



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**GEOTECHNICAL ENGINEERING STUDY
PAVEMENT THICKNESS DESIGN
LOWELL BOULEVARD WIDENING
CLEAR CREEK TO 62ND AVENUE
ADAMS COUNTY, COLORADO**

Prepared By:

By:


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Project No. 11-1-470

June 20, 2013
Revised May 16, 2016
Revised September 23, 2016

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TABLE I – SUMMARY OF LABORATORY TEST RESULTS

TABLE II – SUMMARY OF FWD STRUCTURAL CAPACITY DETERMINATION

APPENDIX A – PAVEMENT DESIGN CALCULATIONS

SUMMARY

1. Kumar & Associates, Inc. previously completed a geotechnical engineering study and submitted a report dated with the associated recommendations for rehabilitation of the project roadway June 20, 2013. After submission of the final report including recommended changes to the previously submitted report by members of the Design Team and Owner, the project had been put on hold. We understand that the project design will be finalized and advertised for construction in the near future. The following provides geotechnical design recommendations and construction requirements based on the data obtained during the 2011 study and our understanding of the proposed construction at this time.

2. A total of 14 exploratory borings were drilled for the geotechnical engineering study and pavement evaluation/thickness design. The exploratory borings encountered full-depth asphalt with thicknesses generally ranging from approximately 8.0 inches up to 16.5 inches with an average thickness of approximately 12.25 inches.

Roadway embankment fill material was encountered below the pavement section in all 14 of the borings and was comprised of silty, clayey sand to poorly-graded sand with silt and gravel. Thicknesses of the fill encountered in the borings generally ranged from approximately 1 to 4 feet, with the exception of Borings 7 and 8 which had embankment fill thicknesses of 7.0 and 7.5 feet, respectively.

Natural soils encountered directly below the embankment fill ranged from sandy lean clay to clayey sand with clay lenses. Those soils are underlain by a combination of silty clayey sands and poorly-graded sands with silt and variable gravel concentrations. Boring 9 encountered silty, clayey gravel below at a depth of 8.5 feet. Bedrock was not encountered in any of the exploratory borings.

Groundwater was encountered in Borings 9, 10, and 11 at the time of drilling at depths 9.0 to 9.5 feet.

3. Design traffic information for the project roadway segment was obtained from the "Lowell Boulevard Traffic Study" performed by Apex Design dated June 2013. An average daily traffic (ADT) volume of 7181 vehicles for year 2011 was provided in the traffic study along with an estimated ADT of 11,550 for year 2035. Based on a 2% growth rate and an assumed opening date of 2013, a mid year design (2023) ADT of 9107 vehicles was determined for the design volume. The "Lowell Boulevard Traffic Study" by Apex Design study also provided a breakdown of the vehicular traffic which consisted of automobiles, buses, and trucks with varying wheel and axle configurations. Based on the information provided, the breakdown of the vehicular traffic was considered to be 96% automobiles/pickup trucks, 3.5% single unit trucks and 0.5% combination unit trucks. Using the Colorado Department of Transportation (CDOT) load equivalency factors for the various vehicle types, an 18-kip equivalent single axle loading (ESAL) value of 365,000 was determined for a 20 year design life. This value appears to be low based on the street classification. Therefore, the ESAL was increased to 730,000 and was used in the design process.
4. Based on the subsurface conditions encountered in the exploratory borings, the results of the laboratory and Falling Weight Deflectometer (FWD) testing performed in 2011, and the design traffic summarized above, the pavement section for reconstruction and

widening of Lowell Boulevard should consist of a minimum of 9.5 inches of full-depth asphalt.

5. Rehabilitation of the existing pavement section through milling and placement of a new asphalt wearing surface is feasible. Based on the 2011 results of the FWD testing, rehabilitation to the existing pavement section should consist of milling of the existing surface to a depth of 2 inches and replacement with a new 2.0 inch asphalt wearing surface for the alignment south of the UP-BNSF railroad crossing. The final report previously dated June 20, 2013 indicated that "for the alignment north of the railroad crossing, we recommend that the existing pavement surface be milled to a depth of 2 inches and two, 2-inch asphalt layers be placed." We understand that due to surface drainage issues, elevating the roadway surface is not feasible. Based on this confining requirement along with further deterioration of the pavement section in the last 5 years, we recommend that the roadway be milled to a depth of 3 inches and replaced with a new 3-inch wearing surface.

PURPOSE AND SCOPE OF WORK

This report presents the results of a geotechnical engineering study and pavement evaluation/thickness design for the roadway improvements to Lowell Boulevard from Clear Creek to the intersection with West 62nd Avenue on the east, in Adams County, Colorado. The study was conducted for the purpose of developing embankment construction, subgrade preparation, and paving recommendations. The project site is generally shown on Fig. 1. The study was conducted in accordance with the scope of work in our Proposal No. P-11-393A to Huitt-Zollars dated August 18, 2011.

A field exploration program consisting of exploratory borings was conducted in order to obtain information on the existing pavement section type and thickness, and the underlying subsurface conditions. Samples of the roadway embankment fills and natural soils obtained during the drilling portion of the field exploration were tested in the laboratory to determine their classification and engineering characteristics. Also, nondestructive deflection testing was performed through the use of a Falling Weight Deflectometer (FWD) to determine the existing structural characteristics of the pavement and subgrade materials for overlay analysis. The results of the field exploration and laboratory testing were analyzed to develop recommendations for pavement rehabilitation/construction. The results of the field exploration and laboratory testing are presented herein.

This report has been prepared to summarize the data obtained during this study and to present our conclusions and recommendations based on the proposed construction and the subsurface conditions encountered. Design parameters and a discussion of geotechnical engineering considerations related to construction of the proposed roadway improvements are included in the report.

PROPOSED CONSTRUCTION

We understand that the project length for Lowell Boulevard between the northern bridge abutment over Clear Creek to the intersection with West 62nd Avenue on the east is approximately 3,750 feet. The proposed rehabilitation will consist of new curb, gutter, and attached sidewalks on both sides of Lowell Boulevard. A third lane will be added to the roadway section between Clear Creek and the south side of the railroad track crossing which will provide for a continuous 2-way left turn lane. A retaining wall will be constructed on the east side of the

alignment starting just north of the railroad track crossing. The retaining wall will be 355 feet in length with a maximum exposed wall height of 3.0 feet. Since our previous field study and report submission, the Fastracks' Gold Line project has added two tracks to the north of the existing BNSF-UP railroad tracks, as well as an additional track for freight rail. Based on the existing topography at the site, site grading for the lane addition and drainage improvements are anticipated to consist of fills from 0.5 to 3.0 feet.

If the proposed construction varies significantly from that described above or depicted in this report, we should reevaluate the recommendations provided in this report.

SITE CONDITIONS

At the time of the field exploration, Lowell Boulevard is a two-lane, minor arterial with no adjacent concrete curb and gutter drainage catchments. Clear Creek is located at the south end of the project alignment. Areas along the roadway alignment, particularly along the northern end of the project north of the railroad crossing are bordered by ponds of various sizes. We understand that the ponds were the result of previous gravel mining activities. The I-76 overpass bridge structures are located approximately 500 feet north of the Clear Creek bridge with the UP-BNSF railroad crossing occurring approximately 1700 feet north of I-76.

During the 2011 field study, the existing pavement section for Lowell Boulevard was in fair to good condition with visual distresses consisting of low to medium severity longitudinal and transverse cracking, low severity edge cracking and isolated low severity alligator cracking.

The overall vertical profile of the roadway slopes gently down towards Clear Creek from north to south. The areas surrounding the alignment generally consist of residential properties with associated acreages. Large deciduous Cottonwood trees are present in the surrounding areas.

SUBSURFACE CONDITIONS

The field exploration for the study was conducted on November 22, 2011. Fourteen (14) exploratory borings were drilled for the geotechnical and pavement thickness design study at the general locations shown on Fig. 1. The exploratory borings were drilled through the existing pavement section of Lowell Boulevard at approximate 250 foot intervals. The borings were

located in both the northbound and southbound travel lanes of Lowell Boulevard. The logs of the exploratory borings along with a legend and explanatory notes are presented in Figs. 2 and 3. The borings were advanced through the existing pavement section and into the underlying roadway embankment fills and natural subsoils with 6-inch diameter continuous flight augers. The borings were logged by a representative of Kumar & Associates, Inc.

Samples of the soils were obtained with a 2-inch I.D. California liner sampler. The sampler was driven into the various strata with blows from a 140-pound hammer falling 30 inches. The test is similar to the standard penetration test described by ASTM Method D 1586. Penetration resistance values, when properly evaluated, indicate the relative density or consistency of the soils. Large disturbed bulk samples were also taken from select borings.

The exploratory borings encountered full-depth asphalt with thicknesses generally ranging from 10.75 inches up to 13.5 inches. The thinnest section of asphalt was found at Boring 14 at the northern end of the project limits and had an asphalt pavement thickness of 8.0 inches. Conversely, the thickest section of asphalt pavement was encountered at Boring 7 which had an asphalt thickness of 16.5 inches. The average asphalt thickness was approximately 12.25 inches.

Roadway embankment fill material was encountered below the pavement section in all 14 of the borings and was comprised of silty, clayey sand to poorly-graded sand with silt and gravel. Thicknesses of the fill encountered in the borings generally ranged from 1 to 4 feet. Borings 7 and 8 had embankment fill thicknesses of 7.0 and 7.5 feet, respectively.

Natural soils encountered directly below the embankment fill ranged from sandy lean clay to clayey sand with clay lenses. Those soils are underlain by a combination of silty clayey sands and poorly-graded sands with silt and variable gravel concentrations. Boring 9 encountered silty, clayey gravel below at a depth of 8.5 feet. The sandy lean clays and clayey sands were slightly moist to moist, and generally stiff to very stiff/medium dense in consistency. The deeper, silty clayey sands and poorly-graded sands and gravels were moist to wet, where groundwater was encountered. The consistency was typically dense to very dense with occasional zones of medium dense material. Bedrock was not encountered in any of the exploratory borings.

Ground water was encountered in Borings 9, 10, and 11 at the time of drilling at depths 9.0 to 9.5 feet.

Samples obtained from the exploratory borings were visually classified in the laboratory by the project engineer and samples were selected for laboratory testing. Laboratory testing included index property tests, such as moisture content (ASTM D 2216), dry unit weight, liquid and plastic limits (ASTM D 4318), and concentration of water soluble sulfates (CP-L 2103). Swell-consolidation tests (ASTM D 4546) were conducted on samples of the soil to determine the swell characteristics under a static surcharge of 1000 psf when submerged in water. One R-Value test (ASTM D 2844) was performed on a selected bulk sample from Boring 10.

The swell-consolidation test results indicated that the on-site overburden soils generally possess nil to low swell potential when wetted under a static surcharge of 1000 psf with measured swell results generally of less than 0.3%. R-Value testing performed on the selected bulk sample from Boring 10 indicated an R-Value of 61 at 300 psi exudation pressure. Results of the laboratory testing program are shown adjacent to the boring logs on Fig. 2, plotted graphically on Figs. 4 through 8 and are summarized in the attached Summary of Laboratory Test Results in Table I. The laboratory testing was conducted in general accordance with applicable ASTM standards.

RETAINING WALL FOUNDATION RECOMMENDATIONS

Considering the subsurface conditions encountered in the exploratory borings and the nature of the proposed construction, we recommend that the proposed retaining wall to be constructed on the east side of the alignment just north of the railroad track crossing be founded on spread footings placed on undisturbed natural soils and/or properly compacted structural fill.

The design and construction criteria presented below should be observed for a spread footing foundation system. The construction details should be considered when preparing project documents.

1. Footings placed on the undisturbed natural soils should be designed for a net allowable soil bearing pressure of 2,500 psf.

2. Spread footings placed on the undisturbed natural soils and/or properly compacted fill material should have a minimum footing width of 16 inches.
3. Footings should be provided with adequate soil cover above their bearing elevation for frost protection. Placement of foundations at least 36 inches below the exterior grade is typically used in this area.
4. The lateral resistance of a spread footing placed on the undisturbed natural soils and/or properly compacted structural fill material will be a combination of the sliding resistance of the footing on the foundation materials and passive earth pressure against the side of the footing. Resistance to sliding at the bottoms of the footings can be calculated based on an allowable coefficient of friction of 0.35. Passive pressure against the sides of the footings can be calculated using an equivalent fluid pressure of 180 pcf. The above values are working values.
5. Structural fill placed against the sides of the footings to resist lateral loads should consist of moisture-conditioned on-site fill. The structural fill should be compacted to at least 95% the maximum standard Proctor (AASHTO T 99) maximum dry density at a moisture content between optimum and 3 percentage points above optimum for the on-site clay used as fill, or within 2 percentage points of optimum for on-site granular soils used as fill
6. Areas of loose or soft material, existing fill or subsoils containing deleterious materials encountered within the foundation excavation should be removed and the footings extended to adequate natural bearing material. Alternatively, the loose/soft material or existing fill may be removed and replaced with granular structural fill compacted to 98% of the maximum standard Proctor (AASHTO T 99) within 2 percentage points of optimum. Structural fill should extend down from the edges of the footings at a 1 horizontal to 1 vertical projection.
7. Care should be taken when excavating the foundations to avoid disturbing the supporting materials. Excavation methods that reduce soil disturbance, such as hand excavation or careful soil removal with a backhoe positioned outside of the excavation may be required.

8. The natural fine-grained soils may pump or deform excessively under heavy construction traffic as the excavations approach footing levels due to possible high moisture content of the soils and close proximity of the ground water table. The use of track-mounted construction equipment and other equipment that exert lower contact pressures than pneumatic tires should be used, and the movement of vehicles over proposed foundation areas should be restricted to help reduce this difficulty.
9. Disturbances to the natural soils caused by construction operations can potentially increase settlements. To reduce soil disturbances, placement of a properly installed "mud mat" of lean concrete or gravel in the bottom of foundation excavations prior to steel and concrete placement should be considered.
10. A representative of the project geotechnical engineer should observe all footing excavations prior to concrete placement.

LATERAL EARTH PRESSURES

Earth retaining structures should be designed for the lateral earth pressure generated by the backfill, which is a function of the degree of rigidity of the retaining structure and the type of backfill material used. Cantilevered retaining structures that can be expected to deflect sufficiently to mobilize the full active earth pressure condition should be designed for the following equivalent fluid pressures:

On-site cohesive soils	45 pcf
CDOT Class 1 Import (<20% passing No. 200 Sieve)	36 pcf

All retaining structures should also be designed for appropriate surcharge pressures such as adjacent buildings, traffic, construction materials and equipment.

We recommend CDOT Class 1 structure backfill be imported to the site for use as backfill behind the retaining wall. The CDOT Class 1 structure backfill be placed behind retaining structures and sloped upward from the base of the wall at an angle of no steeper than 45

degrees from horizontal. The upper foot feet of the wall backfill should consist of a relatively impervious on-site soil or pavement structure to reduce surface water infiltration into the backfill. Backfill should be placed in uniform lifts and compacted to at least 95% of the modified Proctor (AASHTO T 180) maximum dry density at a moisture content within 2 percentage points of optimum. Care should be taken not to over-compact the backfill since this could cause excessive lateral pressure on the walls.

FALLING WEIGHT DEFLECTOMETER TESTING

To evaluate the structural characteristics of the existing pavement section and underlying subgrade materials, Kumar & Associates performed nondestructive deflection testing in 2011 through the use of a Falling Weight Deflectometer (FWD). The FWD is an impulse-loading device that generates a force by dropping weights on a set of springs. The force is then transmitted to the pavement surface through a 12-inch diameter rigid plate. The force applied to the pavement surface measures the elastic response of the pavement layers and underlying subgrade material, as measured through a set of 7 deflection sensors placed at various offsets from the load source. The deflection sensors used in this study were placed at offsets from the load source at distances of 0, 8, 12, 18, 24, 36 and 60 inches. FWD testing began at the intersection of West 62nd Avenue on the east and proceeded south in the travel lane of Lowell Boulevard for a total linear distance of approximately 3,700 feet. Testing was also performed in the northbound travel lane from the southern end of the project limit to the intersection with West 62nd Avenue on the east. The FWD tests were taken at approximately 100 foot intervals and occurred in both the northbound and southbound travel lanes of Lowell Boulevard. The testing locations in the northbound travel lane of Lowell Boulevard were staggered at an approximate 50 foot offset from the southbound FWD testing locations.

In general, when analyzing FWD tests the deflection sensors located at a greater distance from the load source are used to determine the subgrade resilient modulus. When the deflection basin is measured using the FWD, the outer readings of the deflection basin under the imposed load represent the in-situ resilient modulus of the subgrade soil. The subgrade resilient modulus is the value that represents the pavement support condition.

As for the asphalt pavement section, the FWD tests can be evaluated where the stiffness influence of the various pavement layer moduli (asphalt and aggregate base layers, if present) represents the overall structural capacity of the pavement. The structural capacity obtained

from this procedure is generally a function of the maximum deflection determined at the load center and the subgrade resilient modulus. The maximum measured deflection obtained at the load center, along with the measured deflection for the sensors located near the loading plate are used to predict the elastic modulus of both the asphalt and aggregate base course layers (if present). The elastic moduli of the various layers are correlated to existing structural coefficients in accordance with AASHTO procedures. The existing structural coefficients along with the known pavement thicknesses are correlated to the overall existing structural number of the pavement section.

As shown in Table II, the existing structural number was generally variable based on the thickness of asphalt. The existing structural number of the pavement section generally ranged from 2.34 to 5.11. The subgrade resilient modulus determined from the FWD testing was also variable. The variability of the subgrade resilient modulus was based on the variability of the material type. The subgrade resilient modulus generally ranged from 4,900 psi to 10,000 psi. Isolated areas of subgrade materials possessing a resilient modulus of less than 4,900 psi were determined at several locations. The subgrade resilient modulus and correlated existing structural number determined at each of the FWD test locations are provided in Table II.

SITE GRADING

Based on the existing topography at the site, site grading for the lane addition and drainage improvements are anticipated to consist of fills up to about 3 feet.

The ground surface underlying all fills should be carefully prepared by removing all organic matter, scarification to a depth of 8 inches and compacting to 95% of the maximum standard Proctor density at a moisture content within 2 percentage points of optimum. Fills should be benched into existing slopes exceeding 4 horizontal to 1 vertical.

In areas of roadway widening, loose or soft conditions could be encountered within the existing roadside ditches primarily as a result of deposition of sediment from flows during periods of high precipitation and runoff. However, the final design indicates that construction will not impact the roadside ditches where this potential may exist. If encountered, subexcavation to a stable ground or scarification, blending and drying is recommended. Blending and drying will be difficult during winter months where warmer temperatures during the day time will be limited. Proofrolling should be performed to observe and verify the stability of the at-grade surface.

Muck should not be defined as soil with over-optimum moisture for material that would otherwise be acceptable fill if dried.

Good surface drainage should be provided around all permanent cuts and fills to direct surface runoff away from the slope faces. Fill slopes, cut slopes and other stripped areas should be protected against erosion by revegetation or other methods.

For temporary excavations that occur during the project, generally the on-site soils classify as Type C in accordance with OSHA regulations. Isolated areas of clay soils will classify as OSHA Type B soil. All excavations should be constructed in accordance with the applicable OSHA regulations. Based on the on-site materials, we believe that conventional hydraulic excavators may be used for earth moving activities.

Fill placed for the embankments associated with widening should consist of the on-site soils exclusive of organics and deleterious matter. Imported fill, if required, should contain a maximum of 50 percent passing the No. 200 sieve, and have a maximum liquid limit of 35 and a maximum plasticity index of 15. Also, the imported material should possess a minimum R-value of 20 at an exudation pressure of 300 psi.

All fill material should be free of vegetation, brush, sod and other deleterious substances and should not contain rocks, debris or lumps having a diameter of more than 6 inches. Rocks, debris or lumps should be dispersed throughout the fill and "nesting" of these materials should be avoided. The geotechnical engineer should evaluate the suitability of proposed import fill materials prior to placement.

Fill should be placed in uniform lifts not exceeding 8 inches. Fill classifying between A-1 and A-2-5 should be compacted to at least 95% of the modified Proctor (AASHTO T-180) maximum dry density at a moisture content within 2 percentage points of optimum. Fill classifying between A-2-6 and A-7 should be compacted to at least 95% of the standard Proctor (AASHTO T-99) maximum dry density at a moisture content between optimum and 3 percentage points above optimum.

WATER SOLUBLE SULFATES

The concentration of water soluble sulfates measured in samples obtained from the exploratory borings ranged from less than the lowest detected level, 0.02% to 0.06%. This concentration of water soluble sulfates represents Class 0 level of severity for exposure in accordance with the

guidelines presented by the Colorado Department of Transportation (CDOT) Standard Specifications for Road and Bridge Construction. The guidelines have severity levels for potential exposure of Class 0 through Class 3 as indicated by CDOT.

Based on this information, we believe special sulfate resistant cement will not be required for concrete exposed to the on-site soils.

PAVEMENT RECOMMENDATIONS

A pavement section is a layered system designed to distribute concentrated traffic loads to the subgrade. Performance of the pavement structure is directly related to the physical properties of the subgrade soils and traffic loadings. Soils are represented for pavement design purposes by means of a resilient modulus for flexible pavements and a modulus of subgrade reaction for rigid pavements. Both values are empirically related to strength.

Subgrade Materials: Based on the field and laboratory studies, tested samples of the embankment fill subgrade materials directly under the pavement section at the site classify between A-1-a and A-6 soils with group indices between 0 and 2. Tested samples of the underlying natural sandy lean clay soils present at the site classify as A-6 soils with group indices 5 and 13. The clay soils were generally encountered at a depth of 2 feet or greater beneath the pavement section. Therefore, the existing clay subgrade materials should be below the critical zone of wheel stresses that exist beneath the pavement section. Classifications and group indices are classified in accordance with the American Association of State Highway and Transportation Officials (AASHTO) soil classification system.

R-Value testing performed on selected bulk material obtained from of the A-2-4 subgrade materials yielded an R-value of 61 at a 300-psi exudation pressure. Based on CDOT correlation procedures, the R-value of 61 correlates to a subgrade resilient modulus (M_R), of 18,865 psi.

As indicated, the subgrade resilient modulus determined from the FWD testing was variable. The variability of the subgrade resilient modulus was based on the variability of the material type. The subgrade resilient modulus generally ranged from 4,900 psi to 10,000 psi. Isolated areas of subgrade materials possessing a resilient modulus of less than 4,900 psi were determined at several locations.

Based on this information, a subgrade resilient modulus of 4,940 psi was selected for the design of new pavement construction. The resilient modulus of 4,940 psi correlates to an R-value of 20 based on CDOT correlation procedures.

Design Traffic: Design traffic information for the project roadway segment was obtained from the "Lowell Boulevard Traffic Study" performed by Apex Design dated June 2013. An average daily traffic (ADT) volume of 7181 vehicles for year 2011 was provided in the traffic study along with an estimated ADT of 11,550 for year 2035. Based on a 2% growth rate and an assumed opening date of 2013, a mid year design (2023) ADT of 9107 vehicles was determined for the design volume. The Apex Design study also provided a breakdown of the vehicular traffic which consisted of automobiles, buses, and trucks with varying wheel and axle configurations. Based on the information provided, the breakdown of the vehicular traffic was considered to be 96% automobiles/pickup trucks, 3.5% single unit trucks and 0.5% combination unit trucks. Using the Colorado Department of Transportation (CDOT) load equivalency factors for the various vehicle types, an 18-kip equivalent single axle loading (ESAL) value of 365,000 was determined for a 20 year design life. This value appears to be low based on the street classification. Therefore, the ESAL was increased to 730,000 and was used in the design process.

Widening and Reconstruction Pavement Requirements: Based on the design ESAL of 730,000 and the design subgrade resilient modulus of 4,940 psi, the pavement section for reconstruction and widening of Lowell Boulevard should consist of a minimum of 9.5 inches of full-depth asphalt.

The pavement section thickness required in the reconstruction and widening areas was determined by solving the AASHTO pavement design equation through the use of the DARWin™ proprietary software. The pavement design input parameters along with the pavement design calculations are provided in Appendix A.

Asphalt Overlay Alternative: Rehabilitation of the existing pavement section through milling and placement of a new asphalt wearing surface is feasible based on the results of the FWD testing. Using the in-situ subgrade resilient modulus determined from the analysis of the FWD test results and the design ESAL of 730,000, the AASHTO pavement design equation was solved to determine the design structural number required for a 20 year design life. The deficiency between the design structural number and the existing structural number indicates the requirement for an asphalt structural overlay. The design structural number determined at each

of the FWD test locations along with the required overlay thicknesses are summarized in Table II.

Rehabilitation of the existing pavement section through milling and placement of a new asphalt wearing surface is feasible. Based on the 2011 results of the FWD testing summarized in Table II, rehabilitation to the existing pavement section should consist of milling of the existing surface to a depth of 2 inches and replacement with a new 2.0 inch asphalt wearing surface for the alignment south of the UP-BNSF railroad crossing. The final report previously dated June 20, 2013 indicated that "for the alignment north of the railroad crossing, we recommend that the existing pavement surface be milled to a depth of 2 inches and two, 2-inch asphalt layers be placed." We understand that due to surface drainage issues, elevating the roadway surface is not feasible. Based on this confining requirement along with further deterioration of the pavement section in the last 5 years, we recommend that the roadway be milled to a depth of 3 inches and replaced with a new 3-inch wearing surface.

Raising the pavement surface elevation with a 4-inch asphalt overlay is required for the northern 50 to 100 feet of the roadway alignment based on the results of the 2011 FWD testing. Similar to the segment south of the intersection, raising the profile in this area of the alignment may be difficult due to surface flood plain issues. Therefore, reconstructing this portion of the alignment is recommended.

Asphalt Materials: The asphalt pavement should consist of a bituminous material which meets the requirements of a job-mix formula established by a qualified engineer. Grading S or SX is acceptable for the asphalt pavement. In the event that a Grading S mix is selected, the lift thickness should be between 2.0 and 3.0 inches. For a Grading SX mix, the lift thickness should be between 1.5 and 2.5 inches. The top lift should meet a thickness of 2.0 inches.

The asphalt binder selected for the proposed roadway improvements should be a performance grade binder PG 64-22, which conforms to requirements outlined in the 2012 CDOT Pavement Design Manual. The binder recommendations are based on the reliability and temperature extremes. The asphalt mix should be designed using the Superpave gyratory method with an $N_{DESIGN} = 75$.

Subgrade Preparation: Just prior to placement of the asphalt pavement and any concrete for the associated curb, gutter and sidewalk, the underlying subgrade materials should be

thoroughly scarified and well mixed to a minimum depth of 12 inches and recompact to the appropriate moisture and density requirements. Subgrade materials classifying between A-1 and A-2-5 should be compacted to at least 95% of the modified Proctor (AASHTO T-180) maximum dry density at a moisture content within 2 percentage points of optimum. Fill classifying between A-2-6 and A-7 should be compacted to at least 95% of the standard Proctor (AASHTO T-99) maximum dry density at a moisture content between optimum and 3 percentage points above optimum.

Proof rolling should be performed after the specified compaction is obtained. Proof rolling should be performed with heavy rubber tired equipment with a tire pressure of at least 100 psi capable of applying a minimum load of 18-kips per axle. Areas where excessive deflection occurs should be ripped, scarified, wetted or dried if necessary, and recompact to the required moisture and density specifications.

Drainage: The collection and diversion of surface drainage away from paved areas is extremely important to the satisfactory performance of the pavement. Drainage design should provide for the removal of water from paved areas and prevent the wetting of the subgrade soils.

LIMITATIONS

This study has been conducted in accordance with generally accepted geotechnical and pavement engineering practices in this area for exclusive use by the client for design purposes. The conclusions and recommendations submitted in this report are based upon the data obtained from the exploratory borings at the locations indicated on Fig. 1, and the proposed type of construction. This report may not reflect subsurface variations that occur between the exploratory borings, and the nature and extent of variations across the site may not become evident until roadway improvements are performed. If during construction, existing pavement section type and thickness, fill, soil, bedrock or ground water conditions appear to be different from those described herein, Kumar & Associates, Inc. should be advised at once so that a re-evaluation of the recommendations presented in this report can be made. Kumar & Associates, Inc. is not responsible for liability associated with interpretation of subsurface data by others.

RRK/jw

cc: file, book

PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective _____, 2018, (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **ADAMS COUNTY**, a Colorado ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, forty two (42") inches in diameter (the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Westminster, County of Adams, State of CO, Line Segment 0482, Mile Post 5.15 as shown on the attached Drawing No. 71608, dated January 1, 2018, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry storm water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Twelve Thousand Three Hundred and Thirty Four and No/100 Dollars (\$12,334) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective

bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within forty-five (45) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**
 - 11.1 Licensee shall notify Licensor's Roadmaster, at Michael.paz2@bnsf.com or 970-370-3497, or at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
 - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
 - 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
 - 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized

equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request,

Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
 - 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
 - 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
 - 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR

13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate

limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

- 15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

- 15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

- 15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,899.

- ☐ I elect to participate in Licensor's Blanket Policy;
- ☐ I elect not to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

- 15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.
- 15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and

every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensors' property. Licensee agrees periodically to furnish Licensors with proof, satisfactory to Licensors that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensors immediate notice to Licensors' Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensors immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensors has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensors may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensors' right-of-way.
- 17.5 Licensee shall promptly report to Licensors in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall

take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 21 or any other Section of this License.**

22. **Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.**

DEFAULT, TERMINATION, AND SURRENDER

23. **Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to**

provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licenser has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licenser, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licenser may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licenser shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licenser may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licenser of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licenser's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licenser may have at law or in equity.
- 23.4 In addition to and not in limitation of Licenser's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
 - 24.1.1 if so directed by Licenser in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licenser, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licenser;
 - 24.1.2 report and restore any damage to the Premises or Licenser's other property arising from, growing out of, or connected with Licensee's use of the Premises;
 - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licenser or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licenser may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licenser for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licenser has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licenser, provide a bill of sale in a form acceptable to Licenser conveying the Pipeline and the other Improvements to Licenser.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licenser and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licenser, which consent may not be unreasonably withheld or delayed by Licenser. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licenser in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licenser for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.
- 26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2301 Lou Menk Drive GOB-3W
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: Adams County
4430S. Adams County Pkwy, Suite W2000B
Brighton, CO 80601

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.
29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Colorado without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted

the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: _____

Title: _____

Date: _____

LICENSEE:

ADAMS COUNTY a Colorado ,

4430S. Adams County Pkwy, Suite W2000B
Brighton, CO 80601

By: _____

Title: _____

Date: _____

