

PURCHASE OF SERVICE AGREEMENT

THIS AGREEMENT ("Agreement") is made this 5th day of August 2013, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and Huitt-Zollars, Inc., located at 4582 South Ulster Street, Suite 240, Denver, CO 80237, hereinafter referred to as the "Contractor." The County and the Contractor may be collectively referred to herein as the "Parties".

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

1. SERVICES OF THE CONTRACTOR:

- 1.1. All work shall be in accordance with the attached RFP 2013.016 West 60th Avenue from Federal Blvd. to the RTD gold line Commuter Rail Stations and Clear Creek Channel and the Contractor's response to the RFP 2013.016 attached hereto as Exhibit A, and incorporated herein by reference. Should there be any discrepancy between Exhibit A and this Agreement the terms and conditions of this Agreement shall prevail.
- 1.2. 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. RESPONSIBILITIES OF THE COUNTY: The County shall provide information as necessary or requested by the Contractor to enable the Contractor's performance under this Agreement.

3. TERM:

- 3.1. Term of Agreement: The Term of this Agreement shall begin upon receipt of Notice to Proceed and work shall be completed by December 31, 2014.
- 3.2. Extension Option: The County, at its sole option, may offer to extend this Agreement as necessary for up to two, one year extensions providing satisfactory service is given and all terms and conditions of this Agreement have been fulfilled. Such extensions must be mutually agreed upon in writing by the County and the Contractor, and approved by the Adams County Board of County Commissioners.

4. PAYMENT AND FEE SCHEDULE: 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 hundred fifty-nine thousand one hundred twenty dollars (\$359,120.00).

- 4.1. 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 that funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly.

5. **INDEPENDENT CONTRACTOR:** 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 law. **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.**

6. **NONDISCRIMINATION:**

6.1. 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. Adams County is an equal opportunity employer.

6.1.1. 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.

7. **INDEMNIFICATION:** The Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees 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, entities, or property, caused or sustained by any person(s) as a result of the Contractor's negligent performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' negligent performance or failure to perform pursuant to the terms of this Agreement.

8. **INSURANCE:** The Contractor agrees to maintain insurance of the following types and amounts:

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

8.1.1. Each Occurrence: \$1,000,000

8.1.2. General Aggregate: \$2,000,000

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

- 8.2.1. Bodily Injury/Property Damage: \$1,000,000 (each accident)
- 8.2.2. Personal Injury Protection: Per Colorado Statutes

8.3. Workers' Compensation Insurance: Per Colorado Statutes

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

8.4.1. Each Occurrence: \$1,000,000

8.4.2. 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.

8.5. Adams County as "Additional Insured": The Contractor's commercial general liability, and comprehensive automobile liability, insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured" and shall include the following provisions:

8.5.1. 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.

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

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

8.6. Licensed Insurers: All insurers of the Contractor must be licensed or approved to do business in the State of Colorado. Upon failure of the Contractor to furnish, deliver and/or 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 in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

8.7. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.

8.8. Proof of Insurance: At any time during the term of this Agreement, the County may require the Contractor to provide proof of the insurance coverages or policies required under this Agreement.

9. TERMINATION:

9.1. For Cause: If, through any cause, the Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, conditions, 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.

- 9.2. For Convenience: The County may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated by the County, the Contractor will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Contractor was to perform under this Agreement, less payments previously made to the Contractor under this Agreement.

10. MUTUAL UNDERSTANDINGS:

- 10.1. 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 jurisdiction and venue for any disputes arising under this Agreement shall be with Adams County, Colorado.
- 10.2. Compliance with Laws: During the performance of this Agreement, the Contractor agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, 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, and that no violation of such provisions are present. Contractor warrants that it is in compliance with the residency requirements in §§ 8-17.5-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 10.3. OSHA: Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.
- 10.4. 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.
- 10.5. Assign ability: 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.
- 10.6. 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.

10.7. 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.

10.8. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) Three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) Immediately upon hand delivery; or (3) Immediately upon receipt of confirmation that an E-mail was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Department: Adams County Engineering Department
Contact: Mark Omoto
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, CO 80601
Phone: 720.523.6859
E-mail: monoto@adcogov.org

Department: Adams County Purchasing
Contact: Liz Estrada
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601
Phone: 720.523.6052
E-mail: lestrada@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: Huitt-Zollars, Inc.
Contact: Kim Kemper
Address: 4582 South Ulster Street, Suite 240
City, State, Zip: Denver, CO 80237
Phone: 303.740.7325
E-mail: krkemper@huitt-zollars.com

10.9. 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.

10.10. 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.

10.11. 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.

11. CHANGE ORDERS OR EXTENSIONS:

- 11.1. Change Orders: 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 Invitation to Bid, or, if no provision exists, pursuant to the terms of the Change Order.
- 11.2. Extensions: The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

12. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended May 13, 2008, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 12.1. 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.
- 12.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 12.3. 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.
- 12.4. 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.
- 12.5. 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.
- 12.6. 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.

- 12.7. 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).
- 12.8. If Contractor violates this Section, 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.

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


Board of County Commissioners

[Signature] _____ Date 8-5-13
Chair _____ Date
Huitt-Zollars, Inc.

[Signature] _____ Date 7.31.13
Signature _____ Date

Kim B. Kemper _____ Title Senior VP
Printed Name _____ Title

Attest:
Karen Long, Clerk and Recorder

[Signature] _____
Deputy Clerk 
[Signature] _____
Adams County Attorney's Office

Approved as to Form:

NOTARIZATION:

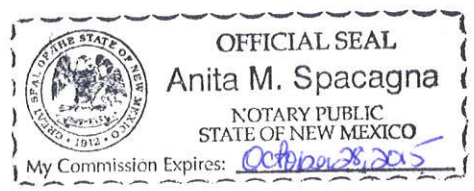
COUNTY OF Bernalillo _____)

STATE OF New Mexico _____)SS.

Signed and sworn to before me this 31st day of July, 2013,

by Kim R. Kemper _____,

Anita M. Spacagna _____
Notary Public



My commission expires on: October 28, 2015

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 contract for services with Adams County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract 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 contract for services.

CONTRACTOR:

HUIT-ZUWAR, INC.
Company Name

7.31.13.
Date


Signature

KIM R. KEMPER
Name (Print or Type)

SENIOR VP.
Title

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

VII. PROPOSAL SIGNATURE PAGE

**ADAMS COUNTY, COLORADO
PROPOSAL SIGNATURE PAGE
PROFESSIONAL ENGINEERING SERVICES
WEST 60TH AVENUE FROM FEDERAL BLVD TO THE
RTD GOLDLINE COMMUTOR RAIL STATION & CLEAR CREEK CHANNEL**

VENDOR'S STATEMENT

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

WE THE UNDERSIGNED HEREBY ACKNOWLEDGE RECEIPT OF

Addenda #1

Addenda #2

Huitt-Zollars, Inc.
COMPANY NAME

4/26/2013
DATE

Corporation
TYPE OF ENTITY (CORPORATION,
GENERAL PARTNERSHIP, ETC.)

751500178
TAX IDENTIFICATION NUMBER

Texas
STATE OF INCORPORATION,
IF APPLICABLE

Robert J. McDermott
SIGNATURE

4582 South Ulster Street, Suite 240
ADDRESS

Denver, CO 80237-2639
CITY, STATE, ZIP CODE

Robert McDermott
PRINTED SIGNATURE

303.740.7325
TELEPHONE NUMBER

303.224.9997
FAX NUMBER

Denver
COUNTY

Executive Vice President
TITLE (Corporate Officer/Manager/General or
Registered Agent, or General or Managing Partner)

(Seal - If Proposal is by a Corporation)



Cost of Services

1. Roadway Design	
Service	Cost
Survey Work & Right-of-Way Acquisition Documents	\$ 12,400
Phase I & II Environmental Assessment & MMP	\$ 7,200
Soils Investigation	\$ 6,400
Utility Design	\$ 15,950
Utility & External Agency Coordination	\$ 9,250
Roadway Drainage	\$ 15,200
Landscape	\$ 1,950
Required Permits	\$ 3,000
Traffic Study, Circulation & Design	\$ 25,050
Preliminary Roadway & Intersection Design	\$ 30,100
Final Roadway & Intersection Design	\$ 48,200
Construction Plan Submittal	\$ 3,600
Public & Citizen Relations/Meetings	\$ 3,000
Wetlands Services	\$ 3,650
Archeological Findings, Paleontological Findings, State Historical Preservation Organization, Senate Bill 40, Threatened & Endangered Species Habitat Assessment	\$ 8,850
CLOMR	
Potholes (cost per pothole)	\$ 500
TOTAL ROADWAY PROJECT FEE	\$ 193,800

2. Channel Design	
Service	Cost
Basic Design Services	\$ 90,500
Subsoils Investigation	\$ 4,500
Right-of-Way Surveying	\$ 6,970
Survey Control	\$ 600
Utility Investigation & Design	\$ 3,500
Public & Citizen Relations/Meetings	\$ 3,000
Landscape Services	\$ 1,950
Wetlands Services	\$ 10,000
Phase I & II Environmental Assessment & MMP	\$ 14,400
Archeological Findings, Paleontological Findings, State Historical Preservation Organization, Senate Bill 40, Threatened & Endangered Species Habitat Assessment	\$ 8,800
CLOMR	\$ 12,250
Potholes (cost per pothole)	\$ 500
TOTAL CHANNEL PROJECT FEE	\$ 156,470

TOTAL FEE FOR BOTH ROADWAY AND CHANNEL	\$ 350,270
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Capacity

Huitt-Zollars is committed to providing Adams County with qualified personnel and dedicating them to meet the schedule requirements of this project. The following table demonstrates the time commitment of key individuals for this project.

Team Member (Firm)	Role	% Committed to Other Projects	Commitment to 60 th Avenue
Brian McLaren, PE (Huitt-Zollars)	Project Manager	20%	80%
Gerald Prusik, PE (Huitt-Zollars)	Quality	50%	20%
Kim Kemper (Huitt-Zollars)	Principal	20%	10%
Scott Reed (Huitt-Zollars)	H & H	70%	30%
Robert Demeule (Huitt-Zollars)	Channel Design	50%	50%
Sarah Lawrence, EI (Huitt-Zollars)	Roadway / H&H	40%	60%
Peter Smith, PE (Smith Environmental)	Wetlands	50%	30%
Kim Martin, PE (Huitt-Zollars)	Roadway	25%	75%
David Kim, PE (Huitt-Zollars)	Roadway	25%	75%
Steve Sabinash, PE (Centennial)	Traffic	40%	50%
Robert Maestas, PLS (105 West)	Survey	60%	30%
James Noll, PE (Kumar)	Geotechnical	50%	40%
Mark Lancaster, PE (Kumar)	Geotechnical	40%	50%
Elissa Roselyn, PG (Goodbee)	Utilities	55%	35%
Julio Jimenez, ASLA (Jimenez)	Landscape	70%	30%

Billing Rates

Engineering/Architecture

Principal-In-Charge.	\$ 200.00
QA/QC Manger.	\$ 190.00
Sr. Project Manager.	\$ 185.00
Project Manager.	\$ 165.00
Sr. Civil Engineer.	\$ 135.00
Civil Engineer.	\$ 120.00
Sr. Structural Engineer.	\$ 165.00
Structural Engineer.	\$ 125.00
Engineer Intern.	\$ 100.00
Sr. Architect.	\$ 125.00
Architect.	\$ 105.00
Architect Intern.	\$ 90.00
Sr. Landscape Architect.	\$ 145.00
Landscape Architect.	\$ 105.00
Landscape Architect Intern.	\$ 80.00
Sr. Designer.	\$ 110.00
Designer.	\$ 95.00
Sr. CADD Technician.	\$ 75.00
CADD Technician.	\$ 65.00

Survey

Survey Manager	\$ 125.00
Survey Technician.	\$ 85.00

Survey Crews

2-Person Survey Crew.	\$ 135.00
3-Person Survey Crew.	\$ 200.00
1-Person Survey Crew-GPS.	\$ 120.00
2-Person Survey Crew-GPS.	\$ 150.00

Construction

Construction Manager.	\$ 165.00
Construction Observer.	\$ 100.00
Resident Project Representative . . .	\$ 100.00

Administrative

Sr. Project Support.	\$ 70.00
Project Support.	\$ 50.00

Reimbursable Expenses

Outside Services.	Cost + 10%
Outside Consultants.	Cost + 10%
Mileage.	\$0.55/mile

May 07, 2013

Mr. Russell T. Nelson, PE
Engineering Manager
Adams County Public Works Department
4430 S. Adams County Parkway
1st Floor, Suite W2000B
Brighton, Colorado 80601-8218

RE: 2013.016 Request for Proposals – **Addendum 3 Response**
West 60th Avenue from Federal Boulevard to the
RTD Goldline Commuter Rail Station &
Clear Creek Channel

Dear Mr. Nelson:

Thank you for the opportunity to follow up on the discussion during our interview regarding the potential historic property in the roadway portion of this project.

We have reviewed the Section 4(f) Appendix from the Goldline Final Environmental Impact Statement, and also discussed the project, the property, and the Section 106 process with Mr. David Beckhouse (Federal Transit Administration), through an exchange of voice mails. Background information and a summary of the discussion are attached.

Our approach to the Section 106 process is also included in the attachment.

The Scope of Services for this work would be:

1. Completing the Section 106 process, this includes an Alternatives Analysis, including up to two meetings with Adams County, the FTA, and the project team. We believe that no recordation mitigation will be required, because we presume that there will not be a Direct Use of 5AM2094.
2. Perform an alternatives analysis (evaluating at least three alternatives) for the W. 60th Ave. and Clear Creek Channel alignments. The analysis will iteratively evaluate the potential impacts of the alternatives under consideration, as well as information on their benefits and costs. The analysis will also propose ways to avoid or reduce the possible impacts that could result from the alternatives under consideration.
3. If necessary, prepare the recordation mitigation (not included in our cost).

We believe that the work can be accomplished within the schedule presented at the interview (also shown in the attachment).

The additional fee for this work would be:

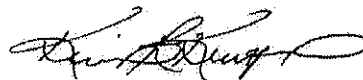
- | | |
|---------------------------|------------------------------------|
| 1. Section 106 Process: | \$3,850 |
| 2. Alternatives analysis | (Already included in fee proposal) |
| 3. Recordation mitigation | \$5,000 (ONLY IF REQUIRED) |

We look forward to the opportunity of participating in this exciting assignment. The information and data submitted with this Proposal is true and complete to the best of my knowledge. If you have any questions, please contact us at (303) 740-7325 or e-mail: bmclaren@huitt-zollars.com, or krkemper@huitt-zollars.com.

Sincerely,



Brian McLaren, P.E.
Project Manager



Kim R. Kemper
Principal-in-Charge

Section 4(f) Resource Clearance
2013.016 West 60th Ave. from Federal Blvd. to RTD
Goldline Commuter Rail Station & Clear Creek Channel
May 07, 2013

On the east side of Federal Boulevard at about 5900 block, the *Goldline Final Environmental Impact Statement, Chapter 7, Final Section 4(f) and 6 (f) Evaluation*, determined that Site 5 AM 2094 is eligible for listing on the National Register of Historic Places and is, therefore, a Section 4(f) resource. This Goldline Section 4(f) evaluation was prepared in accordance with the joint Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) regulations for Section 4(f) compliance codified at 23 Code of Federal Regulations (CFR) §774 and *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*. Additional guidance is provided in the FHWA *Technical Advisory T 6640.8A*, the revised FHWA *Section 4(f) Policy Paper*, and the Land and Water Conservation Fund Act (Section 6(f)) 16 U.S.C. 4601-4 to 4601-11 (P.L. 88-578) and 36 CFR Chapter 1, Part 59.



The green-roofed building and site is shown in street view in the first photo to the right looking NE from northbound Federal at about the 5800 block and from an aerial view in the center of the second photo.

This site includes both property and building. It may be impacted by the proposed 60th Avenue project. The “use” or impact of a protected Section 4(f) resource is classified as a direct use, a temporary use, a constructive use, or a *de minimis* use. The mitigation process associated with impacting a Section 4f resource is discussed in Section 106 of the National Historic Preservation Act and is hereinafter referred to as the Section 106 process.

REGULATORY OVERVIEW OF DIRECT, TEMPORARY, CONSTRUCTIVE AND DE MINIMIS USE

A **direct use** takes place when the land is permanently incorporated into and used by a transportation facility or roadway. In the context of 5AM 2094 this would include the taking of the structure and property.

A **temporary use** occurs when there is a brief or temporary use, considered adverse in terms of the preservationist purposes (the attributes of the facility that qualify it for special recognition under Section 4(f)). After the period of use, the resource must be restored to the condition in which it was originally found. A temporary occupancy of property *does not* constitute a use when the following conditions are satisfied:

- The occupancy would be temporary (shorter than the period of construction) and would not involve a change in ownership of the property.
- The scope of work must be minor, with only minimal changes to the protected resource.
- There would be no permanent adverse physical effects to the protected resource, nor would there be temporary or permanent interference with activities or purpose of the resource.
- The property being used must be fully restored to a condition at least as good as what existed prior to the project.
- Documented agreement of the appropriate officials having jurisdiction over the resource must be acquired regarding the foregoing requirements.

Constructive use occurs when the transportation project does not incorporate land from a Section 4(f) resource, but the impacts from the project's proximity are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired.

Congress amended Section 4(f) in 2005 when it enacted the *Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU)* to define **de minimis use**. The SAFETEA-LU amendment to the Section 4(f) requirements allows the USDOT to determine that certain uses of Section 4(f) land will have no adverse effect on the protected resource. When this is the case, the use is considered *de minimis*, and compliance with Section 4(f) is greatly simplified and can be approved without the evaluation of avoidance alternatives typically required in a Section 4(f) evaluation. The finding of a *de minimis* impact on recreational and wildlife resources can be made when:

1. The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);
2. The official(s) with jurisdiction over the property are informed of FTA's intent to make the *de minimis* impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f); and
3. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.



**SMITH ENVIRONMENTAL AND
ENGINEERING**

*Delivering Smart Solutions for Planning, Permitting,
& Design*

Education

Ph.D. Anthropology – 1986, University of Colorado

M.A. Anthropology – 1982, University of Colorado

*B.A. Anthropology – 1979, Southern Illinois
University*

Employment History

Smith Environmental and Engineering

URS Corporation

SWCA Environmental Consultants

San Juan National Forest

Professional Affiliations

*Colorado Archaeological Society, Board of Directors,
1994 - Present; Executive Secretary, 1996 –
1999, President, 1995; Vice President, 1994*

*Colorado Historical Society, Board Member 2000-
present, Facilities Committee Chair 2002-
present*

*Society for American Archaeology, member 1987-
present*

Areas of Expertise

Cultural resources management

Section 106, NHPA compliance

Prehistoric and historic archaeology

Physical anthropology – human osteology

Architectural History

Dr. Bob Mutaw

Cultural Resource (Historic/Prehistoric) Principal Investigator

Qualifications Summary

Dr. Mutaw has 32 years of experience in all phases of cultural resources management. He has managed numerous investigations including files searches and literature reviews, surveys, testing, excavations, architectural evaluations, Section 106 coordination with FTA and FHWA, and HABS documentation. He has assisted federal agencies with SHPO and Native American consultation and preparation of Memoranda of Agreement and Programmatic Agreements. His experience includes projects in the states of Colorado, Wyoming, Alaska, Arizona, Arkansas, California, Kansas, Georgia, Idaho, Illinois, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Utah, and in Japan and South Korea. He has authored or coauthored over 4000 cultural resources management reports, contributed to EA/EIS documents, published several articles, and presented numerous papers at professional meetings. Dr. Mutaw also has experience in the excavation and analysis of human skeletal remains. He has been involved in over 500 small to large-scale cultural resources management projects.

Experience Summary

Dr. Mutaw has completed over 400 cultural resource projects in his career, some are described below.

- Regional Transportation District (RTD), Northwest Rail EIS, Adams, Boulder, Broomfield, Denver and Jefferson counties, Colorado: Principal Investigator, Cultural Resources Inventory (2007) and Section 106 coordination with FTA and mitigation.
- Colorado Department of Transportation, US 287 Berthoud Bypass, Larimer County, Colorado: : Principal Investigator for Section 106 coordination with FHWA and HABS documentation of Charles Wilson Residence and SHPO Level II HABS/HAER Documentation of Handy Ditch and Colorado Central Railroad in Larimer County, Colorado (2000).
- Colorado Department of Transportation, Gaming Area Access EIS, Clear Creek, Gilpin and Jefferson Counties, Colorado: Principal Investigator, Cultural Resources Inventory (2001-2002).
- Colorado Department of Transportation, I-70 Havana Street Interchange EA, Denver, Colorado: Principal Investigator for architectural assessment and EA cultural resources section preparation (2001).
- Colorado Department of Transportation, US Highway 50 Corridor Study, Pueblo, Otero, Bent and Prowers Counties, Colorado: Principal Investigator for Class I overview of cultural resources along highway corridor (2002).
- El Paso County, Huckleberry Road Bridge Replacement, El Paso County, Colorado: Principal Investigator for cultural resources inventory for county road bridge replacement (2004).
- RTD, North Metro Corridor EIS, Adams and Denver counties, Colorado: Principal Investigator, Cultural Resources Inventory (2007).
- RTD, Gold Line Corridor EIS, Adams, Denver and Jefferson counties, Colorado: Principal Investigator, Archaeological Inventory (2007).
- Regional Transportation District, Central Platte Valley Spur Light Rail Transit Project, Denver, Colorado: Principal Investigator for light rail project that parallels the Consolidated Main Line (railroad) in downtown Denver (2002).
- Union Pacific Railroad, Bridge Replacement Projects, Several States: Principal Investigator for Section 106 coordination with FHWA, historic documentation and SHPO consultation on bridge replacement projects in Arkansas, Colorado, Illinois, Louisiana, Missouri, Nebraska, Oklahoma, and Texas (2004-2007).
- Pueblo County, Piñon Road Realignment, Pueblo County, Colorado: Principal Investigator for cultural resources inventories of multiple road realignment alternatives (2003).